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Let us begin at the beginning. Why do we study such a book as Locke's Treatises of Government? What would you say? After all, do we not have much more urgent things to do? There is not a word in it about our present situation. I don't have to labor that point. Why do we read this kind of thing. We must not take that for granted. What would you say?

(Ans: I suppose the historian would say as a tool for the understanding of English constitutional history. But beyond this I would think it would be of value to see the development of the modern theory of natural right and the consent of the governed.)

But is there not a more obvious reason, a reason which every high school senior, at least, would know?

(Ans: In connection with Jefferson and the Declaration of Independence.)

That's it. In other words, to say nothing of other famous documents, the Declaration of Independence is based on Locke. Since we have to mention this document anyway, what is the precise relation of Locke and the Declaration of Independence?

(Ans: Jefferson took some of his ideas on natural right and the right of the people to choose their own government from Locke. The Declaration of Independence is a natural right document to the best of my knowledge, and a good deal of its argument is taken from Locke.)

How can you prove that?

(Ans: One can see it in the text of the Declaration. When Jefferson first uses the statement life, liberty and property, later changed to the pursuit of happiness, he was using Locke's formulation.)

But it is even more specific. There are some sentences which are literally taken over from Locke. For example, the phrase "not for transient causes" and so on. But there is no doubt that the Declaration of Independence was based on this thought. But you said that Jefferson changed a part of Locke's.

(Ans: Yes, originally I believe that he had intended to say "all men are endowed by their creator with certain inalienable rights, and among these are life, liberty and property. I believe he changed this to the pursuit of happiness because there was some objection or common bias against the aristocratic notion of property.)

I am almost certain that you are wrong. I am almost certain that there was never any question of property. If my memory does not deceive me, the formula goes back to ~~Madison's~~ ^{Mason's} (South Carolina) formula where life, liberty and the pursuit of happiness (not property) was indicated. But at any rate, the most obvious difference between the Declaration of Independence and Locke

is that the key third right, natural right, in Locke is property and in the Declaration of Independence is not property but the pursuit of happiness. That is, of course, a very great change. Whether it can be explained in the way in which you explain it--that Jefferson was opposed to a property-oriented natural right doctrine or not--is a very difficult question. There could be given a more technical or theoretical reason. The view that there is no natural right to property is based on the premise that there is no property prior to the establishment of civil society. That view can be held on entirely theoretical grounds, and then it can be said that on these grounds there cannot be a natural right to property. That view, and again I have to rely on my memory on this point, was held by Lord ~~Blackstone~~, who Jefferson used. This was held by people other than this Scottish jurist, but it seems that he was one of the more important people holding it.

On the other hand, what was Jefferson's chief preoccupation in this early period, in his activities in Virginia and so on? Wasn't he particularly concerned with religious freedom? Could not religious freedom be subsumed under the right to the pursuit of happiness? Because the right to the pursuit of happiness does not specify that this happiness must be earthly happiness. This could be of value, although we cannot go into this question now. At any rate, there is obviously an important connection, but also an important difference, between the Declaration of Independence and Locke. But let us go back to the question from which we started. We raised the question why we should study such books as Locke, and the answer given would be something like this: Locke's Treatises of Government exercised a very great influence both on American and British thought, opinion and action. But we must consider the horizon in which this whole problem arises. We presuppose that it is reasonable to be concerned with an analysis, say, of American society. Now an essential part of every society is the ideas which permeate the society and give it its character. In order to understand these ideas, it is necessary in some cases to go back to the classical proponents of those ideas--in our case, Locke. So the premise of the whole enterprise, and the perspective of it, is the obvious necessity of having a proper analysis of our society. That makes sense; at least it is sufficiently commonsensical not to question that. But can we leave it at that? Can we leave it at such an approach? We want to understand American society--one of the fundamental documents of America is the Declaration of Independence--in order to understand the Declaration of Independence it is necessary to have read Locke's Treatises of Government. Is this sufficient?

Must we not also pursue, from this same starting point, i.e. American society and the ideas giving it its character as well as the origin of these ideas, ~~or~~ take another direction from this same starting point? Assuming we have understood this idea of right to life, liberty and pursuit of happiness (or property), what question arises?--a question which is as important as the purely historical question, to say the least.

(Ans: The validity.)

The validity. In other words it is not enough to know that ideas "x", "y" and so on play a role in a given society. It is also important to know the quality of these ideas. Are they true, or valid, or untrue? So let us now look at the

problem from this point of view. In a way this is a much more simple and more necessary approach. We seek the political truth, and this has, in itself, nothing to do with any books. But a very practical consideration enters--the difficulty of knowing that truth. Therefore, we have the need for competent assistance, the need for the works of the great thinkers, who can be presumed to be more valuable than most, perhaps all, of us. So if we approach Locke from this point of view, we expect in Locke to find some help toward the political truth--perhaps the truth itself or at least a very important error. To understand an important error is, of course, a great help toward understanding the truth. Here we make another presupposition which is worth a certain consideration. We assume here that Locke is talking about the same things, fundamentally, with which we are concerned--that Locke's problem is fundamentally the same problem as our problem. But we do not yet know whether Locke's answer is acceptable to us. We have, or imply, this notion--that there is a fundamental political problem, and this fundamental political problem permits of a variety of answers which have theoretically the same status as the problem. If the problem is, so to speak, eternal or at least coeval with man, then the alternative answers will have this same status. Let us speak of a timeless problem and timeless alternatives. Does this make sense--that there could be such problems which are raised at all times, if not always with the same degree of clarity. So the answers to these problems could in principle have been given at any time.

Let us look for some examples; otherwise the question will not become sufficiently clear. Have you ever heard of such a view? In reading a contemporary thinker or writer (perhaps not all thinkers are writers and all writers thinkers) we are reminded of something, a thought, which is very old. We say that this is the same position, the same answer, to the same question. Have you ever come across such phenomena? We are speaking of very elementary things here.

(Ans: One finds continual emphasis on the elementary urges, eating, and so on.)

That would be clear proof that such a thing exists, but still eating is not as such a theoretical problem. Let us look at a theoretical problem. You are perfectly right in what you say, of course, because thinking is as much a part of man's natural constitution as the need for food.

(Ans: As one example, Karl Popper's whole book, The Open Society, is based on this subject.)

I think I have never read that book, so you will have to tell me something about it.

(Ans: It is a book trying to show how various thinkers from Plato through Hegel answer the question of the possibility of democratic society in theory.)

In other words, it was the same problem--is democracy good or bad? And it was answered either with yes or no, so to say, at all times. Alright. But a more common example would be, for instance, when people speak of Machiavelli they are (we all are for that matter) reminded of certain doctrines or theses we find in Plato--Thrasymachus, for example. (Book I of the Republic) We may also be reminded of the Athenian ambassador to Megara in Thucydides' Histories.

In other words, a kind of complete disregard of moral considerations in politics which is believed to be characteristic of Machiavelli we find equally in these ancient men. Or to take an example a bit closer to us, let me read to you a passage from Aristotle's Politics (Book III, 1280 a-b)

But the end of the state is not mere life; it is, rather, a good quality of life. . . . It is not the end of the state to provide an alliance for mutual defence against all injury, or to ease exchange and promote economic intercourse. . . . In states which have this character/ neither of the parties concerns itself to ensure a proper quality of character among the members of the other; neither of them seeks to ensure that all who are included in the scope of the treaties shall be free from injustice and from any form of vice; and neither of them goes beyond the aim of preventing its own members from committing injustice against the members of the other. But it is the cardinal issue of goodness or badness in the life of the polis which always engages the attention of any state that concerns itself to secure a system of good laws well obeyed. The conclusion which clearly follows is that any polis which is truly so called, and is not merely one in name, must devote itself to the end of encouraging goodness. Otherwise, a political association sinks into a mere alliance, which only differs in space from other forms of alliance where the members live at a distance from one another. Otherwise, too, law becomes a mere covenant . . . instead of being, as it should be, a rule of life such as will make the members of a polis good and just.

In other words, Aristotle here contrasts two opposite interpretations of political interpretation of association: the one which sees its function in making the members virtuous (to use the old fashioned expression); the other view is that the function of civil society, or political society, consists in making possible peaceable exchange and preventing everything which would endanger that peaceable exchange, such as fraud and force, ~~and~~ ~~the~~ without being concerned about the character of its members beyond this point. Now such a view of civil society as Aristotle here sketches, and rejects, has occurred very frequently in modern times. And one can perhaps say that it ~~was said in predominantly modern times~~, certainly in men like Hobbes, Locke and quite a few others. So we have here a fundamental understanding of the state which was the same, say in the 19th and 20th century, as it was long ago. So it does make sense to speak of timeless problems and of timeless answers to these problems.

But this is not sufficient. Time does play a role. If the view I sketched first were simply correct, the sequence of the great political thinkers would be purely accidental. But as we find out when studying the sequence of these thinkers, or what we call the history of political thought, then we see there is a certain order in the sequence. Is this general statement intelligible?—that the sequence of these thinkers is not merely accidental (although accident does play a role) but that the sequence also has a certain order. For example, if a man makes a statement that the doctrine of Marx could not possibly have preceded the doctrine of Hegel, but

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that it makes sense that Marxist doctrine followed that of Hegel, I think this has some truth in it. There are other examples of the same kind. Now if we bring up the most important examples of such differences, of such temporal differences--temporal and at the same time meaningful difference, between the great political thinkers, the example would be the difference between modern thought and pre-modern thought. In other words, in spite of the fact that there were such doctrines reminding of Machiavelli in classical times and doctrines reminding of Locke and Hobbes in classical times, there is a possibility that if all these modern thinkers have something very important in common which distinguishes them from all pre-modern thinkers, and these two distinctions cross each other. . . . Is this general possibility clear?--otherwise it is no use that I go on. Is this intelligible? Let me try to present it graphically. Let us assume that this is the same problem, the same fundamental problem, and there is this and this fundamental alternative--a Machiavellian type of doctrine, a Lockean type of doctrine, and an Aristotelian type of doctrine. And we find these types of doctrines, so to speak, at all times. But there is an additional possibility--that these kinds of types are crucially affected by a distinction which cuts across, a distinction between pre-modern and modern thought, so that all modern thinkers, in spite of the great opposition among them, have something very important in common, and that all pre-modern or ancient thinkers, in spite of all the disagreements among them, have something very important in common. Does this possibility make sense?

I leave it open what this element in common is, but that there is something very important is clear. Let us present it as follows. Let us assume that the view is correct that Thrasymachus, in the first book of the Republic, had something in common with Machiavelli, and that some Sophist called in Aristotle's time had something very important in common with Locke. There could still be this possibility--that Machiavelli and Locke have something in common which distinguishes them from Thrasymachus and these other representatives of earlier thought. Is there something to this hypothesis? We have to consider that.

I will try to present this in a very simple form. This would need, of course, very long footnotes, but I believe it will reach at a certain point an immediate intelligibility. Let us raise this question: How did the most influential pre-modern thinker view philosophy, and how is philosophy viewed today? I will justify that and also specify it. The most influential thinker of pre-modern times can be said to have been Aristotle. And I will not go into any question of a deeper understanding of philosophy; I will limit myself to the most external and bureaucratic aspects -- the division of philosophy into disciplines. Now, how did Aristotle divide philosophy? He divided philosophy in the first place into two main parts--theoretical and practical. Then he subdivided each into three--mathematics, physics, and metaphysics (which could also be called theology). Physics means all natural science. Now what were the subdivisions within the practical?--ethics, economics and politics. Then Aristotle said there is a seventh part, which is not a part proper but a kind of prelude to the whole, and that he, or his pupils called, logic. This was the division of philosophy. Now what would be the division of philosophy today? It is something very simple, something you could find out by looking at a few announcements of a few different universities.

Str. Yes.

(Ans: Logic would be a part of philosophy.) (Of course, there would be a philosophy of the various so-called disciplines, e.g. religion and so on.)

Religion is not a discipline in itself, at least how you mean it here. Today I believe we can immediately add epistemology, although that it frequently taken together with logic.

(Ans: There is also a philosophy of history in the theoretical)

Certainly. Everything which comes to your head, provided it is borne out by any announcements.

(Ans: Philosophy of art.)

I believe they also call this aesthetics. But how can you forget ethics. And what else?

(Ans: Poetics.)

But that is no longer treated in this way. Do you know where poetics occurs in the traditional order, the Aristotelian order? As a part of logic—one form of proving things. But now let us come to consider what are the differences. We don't have to go into every point, but the salient things are very helpful. But first one footnote. This division which I gave here is the Aristotelian division; it was not accepted by all philosophic schools. I take it only because it facilitates this contrast. Well, what about mathematics, physics, or economics, for that matter; are they regarded as parts of philosophy today? Where do they come in?

(Ans: They usually come in under natural science. Mathematics would have a sort of distinction of its own, although it would not come under philosophy.)

This is the only point I am interested in. Now would economics.

(Ques: It would appear to be something of an inversion in that Aristotle appropriated science to philosophy, whereas at present philosophy is subordinate to science. Those who consider this at present presuppose that the basis of any philosophy is the scientific method . . .)

That has something to do with what I am driving at.

(Ques: Could you say that epistemology, in a way, devours these other things?)

That is not quite fair, because there are people who are concerned with aesthetics and would absolutely refuse that. But the simple point and the first thing we have to observe is this. In our present day thought we make a distinction between philosophy and science, a distinction which is absent from Aristotle. Aristotle doesn't give us a division of philosophy only, but he gives us a division of knowledge as such. This implies, and this is crucial, that certain parts of philosophy, of philosophy in the old sense, are now outside of philosophy completely, e.g. mathematics, physics and economics.

double sentence metaphysics

Political science perhaps also belongs there. Clearly in this case. But the most important example of these three is physics, which means here natural science as a whole. Now what does that mean?--because, to mention in passing, that mathematics is in a way something outside of philosophy was always granted practically. People spoke of philosophers and mathematicians already in Plato's time. They are two different things. The interesting problem is physics, or natural science. Why?

(Ques: Didn't this dualism between philosophy and science come forth as a result of the discoveries of the 16th and 17th centuries in natural science.)

This has something to do with it, but we must state ^{it a bit} ~~our problem~~ more precisely.

(Ans: This is a little bit of an oversimplification, but natural science today would be considered as the highest form of knowledge, in fact in a way the only legitimate form.)

In a way, yes, but that is all a consequence of one point which I will try to state. Up to the emergence of modern science in the 17th century, physics was always a philosophical discipline proper. By which I mean you could not be a physicist without belonging to a specific philosophic school. There was ~~an~~ Aristotelian physics, there was ~~a~~ Platonic physics, there was ~~an~~ Epicurean physics, ~~a~~ Stoic physics, and so on. There was no philosophically neutral natural science. This is the most striking feature of modern thought as distinguished from pre-modern thought--the establishment of philosophically neutral sciences, which by virtue of their philosophic neutrality lay a claim to intellectual superiority; so much so that they became, or tend to become, an authority for philosophy. That applies especially, of course, to the natural sciences, but we find parallels to that in the social sciences as well. Now the most interesting thing in social science is economics. For Aristotle economics is as much a part of philosophy as ethics, whereas today economics has the same cognitive status as any of the natural sciences, at least to the extent to which it is a science. So this is then the first crucial difference--the establishment of philosophically neutral sciences which confront philosophy with the claim to be authoritative for philosophy. How this happens you all know from your high school. That this new physics, which began with Galileo and culminated in Newton, proved to be superior to any available alternatives, and it proved to be possible to establish the characteristic themes of this physics against any doubt or question. This had never happened before. All future developments in physics, including the more modern developments, is only derivative from this crucial development of the 17th century.

Philosophy has been deprived of a considerable number of disciplines which formerly were regarded as philosophic. But how does the rump of philosophy look? What is characteristic of it? What is characteristic of this modern notion of philosophy (I disregard here metaphysics) as distinguished from Aristotle? What is the common formula you can apply to all of them, to all these disciplines, e.g. logic, epistemology, philosophy of history, art, religion and so on.

(Ans: Indistinct)

No. That is exactly the point, but that is a very important point you mention. The distinction between theoretical and practical has been abolished, and one could say, although that is a bit subtle, that all these disciplines are neither simply theoretical nor simply practical. The distinction does no longer apply to it properly, or sharply. But what is it as far as the subject matter of all these disciplines is concerned. There is something very obvious.

(Ans: They are independent of one another.)

That is true to some extent, but I was thinking more about the subject matter. What do they all have in common? May I suggest a simple word. They all deal with man, human thought, human science, human interests, human arts, human religions (for that is, of course, the difference between philosophy of religion and theology; theology deals with god and philosophy of religion deals with man, with man's concern with god). Now an older formula for what I call man was the consciousness or the human mind. If you think of some of the most famous modern book titles, e.g. Locke's Essays Concerning Human Understanding, Berkeley's Principles of Human Knowledge, Hume's Treatise of Human Nature, Kant's Critique of Pure Reason, Hegel's Phenomenology of the Mind, and so on, the mind, the human mind, the consciousness is the theme of modern philosophy to a much higher degree than it was in former times. In former times, for example, if you said metaphysics it meant something--perhaps you could say god, perhaps the whole cosmic order--~~different~~ was the theme of the older kind of philosophy. The whole cosmic order is now the theme of natural science and no longer of philosophy. Philosophy has to do with it indirectly, insofar as human knowledge of the cosmic order, science of it, human activity is still in a way the theme of philosophy.

Now I would like to add another point to indicate that there is really something. You can say I am trying to prove something trivial, but one must sometimes bother to make a bit clearer to one's self what is generally admitted in order not to become mistaken, dangerously mistaken. Now if one looks back at this great divide which falls generally speaking in the 17th century and the most famous name . . . But who is generally regarded as the founder of modern philosophy, at least in the textbook version?

(Ans: Descartes.)

Yes. It is a perfectly intelligible and defensible thesis. Now let us look for one moment at Descartes, because in Descartes we can perhaps see how these things hang together. Prior to Descartes, and the starting point for Descartes was this.--Here we have these many philosophic books, a tremendous tradition going back to early antiquity. And what has come out of that? What is the value of that tradition? Descartes' answer--ZERO! Because there is not a single point which is uncontested. There is only one glimmer of light, one available discipline which is really healthy and good, and that is mathematics. Everything is contested, everything is doubtful, and the simple proof of this is the fact that the whole philosophic tradition is split into two branches. One were called the dogmatics, and the other were called the skeptics. If philosophy had ever become truly a science, there could not be skepticism. The very existence of skepticism and the very

survival and persistence of skepticism proves that philosophy has not yet reached the status of science. Descartes wants to change that radically, and he proceeds, generally speaking, in this way. He says the skeptics are right. The skeptics are right, up to a point. We must start from the most extreme form of skepticism—doubt of everything. ~~In the Meditations~~ everything must be doubted. And then, by this very act of the most radical doubt, we will discover a certainty which is beyond all possible doubt. And starting from that absolute certainty we can then construct an absolutely safe and foolproof science. And what was that certainty which will resist any possible doubt.

(Ans: The consciousness that I exist.)

Let us say—my consciousness. I will not go into the details of Descartes' formulation here. ~~The ego and its ideas—that is the only absolute basis.~~ And here we see that the ego, the consciousness, in a certain enlargement we may say the human mind, becomes the primary and eventually the only content of philosophy. But let us also consider the other aspects. Descartes wants to arrive and believed to have arrived at a genuine science, a perfect science, a dogmatic science. Dogmatic means here only a science which can teach....There is a dogmatic teaching, but this dogmatic teaching is distinguished from all earlier dogmatic teachings by the fact that it is based on the most extreme skepticism. So if we say dogmatism based on skepticism, we can say that is the formula for what constitutes modern philosophy, at least in this classic or heroic stage of the 17th century. And don't believe that this is merely something of the past. If you talk today to the more radical types of social scientists, you find out within a very short time that they still have this Cartesian dogmatism based on skepticism. What is characteristic of social science in the extreme form?—the rejection of all primary knowledge, of all knowledge preceding scientific knowledge. You know of certain attempts to prove some truth about man, or about specific groups of men, which every child knows. The idea being that this cannot be known if it has not been established by means of a strictly scientific procedure. Everything which has not been established in this way has the character of folklore. You must have heard this, or perhaps some other terms which they may use. The scientific approach emerges by virtue of a radical break with our pre-scientific, ordinary, common sense understanding of things. That such a break is required, that is precisely the Cartesian heritage. And just as in Descartes, at least as far as knowledge of the ~~universe~~ was concerned, the true science must be mathematical, the same is still noticeable in present day social science. All true knowledge has the character of quantitative knowledge, and what we know independently of it, for example most people like this or that, is a wholly unscientific statement. What we must do is find out in numerical terms how large a percentage of the population really does have that preference. What I am driving at is that while Descartes work or the work of the 17th century altogether has, of course, been ~~superceded~~ by many later developments, it still is discernable up to the present day. So it makes some sense, then, to speak of a fundamental difference between modern thought and pre-modern thought. Are these points clear, or at least apparently clear. Do you recognize some

phenomena which you know independently ^{of} what I have said.

Let me add, then, one more point and I am willing to repeat the question immediately. I would like to illustrate this difference now by examples taken from political philosophy, because this fundamental change expressed itself in political philosophy in particular. In Descartes and in his followers we see the primacy of the ego (the consciousness) over against the whole order, the cosmic or divine order. Now there is a simple correspondence to that in political thought. Descartes wrote an ethical work called the Passions of the Soul in which, I believe, there is not a single reference to duties. But in the most important paragraph of that work there is an emphatic assertion of rights. The theoretical primacy of the ego cogito (I think) finds its moral-political expression in the primacy of rights as distinguished from duties. I add now a general observation--that generally speaking, especially in the Middle Ages and in the early modern times, political thought frequently took on the form of a teaching regarding natural law, so that the political teaching was to a certain extent even identical with the teaching regarding natural law. And within this teaching regarding natural law we find this fundamental change taking place in the 17th century: that whereas the traditional natural law teaching spoke either exclusively or chiefly of the duties of man, this modern kind of natural law teaching speaks primarily or chiefly of the rights of man. Certain rights of man, or natural rights, were of course implied in the older natural law teaching, but they were mostly left in the state of implication. In the modern way of thinking, which appears most clearly in Hobbes, the primary moral phenomenon is not duty but right. It has often been said that laws and rights are necessarily correlative. Let us grant that this is true, but there still remains this crucial practical difference--whether the emphasis is put upon the duties or upon the rights. And in this respect we find a very clear distinction between the thinkers of the Middle Ages, especially, and of classical antiquity on the one hand and those of the 17th and 18th century. This can also well be understood if we think of the fundamental change in theoretical matters, in general philosophy, namely the primacy of the thinking ego as compared with the objective cosmic or divine order. That was only meant to illustrate the assertion to which I for one have been driven again and again in my studies: that one must admit that a radical change in human orientation has occurred in the early modern times, the 17th or 16th century, and that this has affected all later thought up to the present day. And that this new thing, which is difficult to define, which entered during this period, is not to be found in any earlier thought.

(Ques: How would you fit into your scheme those scientific philosophers and those scientists who don't seem to regard scientific knowledge in terms of certainty at all, but rather in terms of approximations and of approaches which are always open? . . . a philosophy of science like that of Dewey.)

That is a very uninteresting difference, because these men, let us speak rather of the scientists themselves who are perfectly willing to revise

(unclear) every theory, take it for granted that these theses of science have a higher dignity than what we say about ~~man~~. In other words, while there is an openness there ⁱⁿ science, yet science has an exactness, a peculiar theoretical dignity, which is, of course, in no way questioned by the fact that they are sure there will never be the final solution to the cosmological problem as Newton, for example, regarded it as possible. In other words, in order to see how little skeptical these people are you have only to consider ancient skepticism, which was really skepticism and denied, of course, any cognitive value to mathematics, to physics, to medicine, or whatever have you. In short, what you suggest is a refinement but not a fundamental change of it.

(Ques: Insofar as the thought of antiquity and the Middle Ages emphasized duty instead of right, would you consider modern forms of totalitarianism as retrogression to antiquity and the Middle Ages?)

You have taken a somewhat narrow view of right. Can you reduce what you understand by totalitarianism to a simple proposition? I will not quibble with words, but I would like to see it.

(Ans: That the state takes more than it gives to the individual; that is, that the individual becomes less important as an end in himself than as a creature of the state.)

What about the state? Can the state do what it wants?

(Ans: Yes, its will is a law unto itself.)

You must take what I said earlier somewhat more broadly. This modern doctrine can be said to branch out in two directions: the one is the natural rights doctrine, say as you know it from Paine and others, but the other expressed itself most clearly in the modern doctrine of sovereignty--the sovereign state or the sovereignty of the government or whatever it may be. Now just as in that liberal version the individual is absolutely sovereign--in the extreme case--in the statist doctrine the state has this absolute sovereignty. There is nothing higher than man, either the individual or the collective. That is the common characteristic of both. The doctrine of sovereignty is as specifically modern as the doctrine of the rights of man. The older doctrines, which had any political meaning, took it for granted that there is something superior to man, individually or collectively. Therefore the difference remains.

(Ques: Perhaps you can clarify another point here. Insofar as antiquity and the Middle Ages employed a conception of natural law in their theory of the best political order, was the polis sovereign because it embodied the natural law or was the natural law merely a front for the sovereignty of the polis?)

We are not now speaking of the empirical polis, which was as good or as bad as empirical society was at all times. But if we take the understanding of the issue by the philosophers, then the polis owes any rights it possesses

in the last resort to its moral function. In that sense we use this more common formula--the polis is subject to the natural law. Any rights it has are derivative from its duties. While there is a great difference *between* whether you start from the individual or from the society, this question I am now stating applies equally to both forms of stating the problem.

(Ques: Would you empirically that the state is derived from natural law and not law derived from the state?)

That is what I meant. At any rate subject to it, but you can also say derived. It is not wrong to say that, although it is not deep enough. In other words, totalitarianism can be said to be an extreme form of the modern doctrine of sovereignty--that the state is not subject to any law except--no, not to any law, because any law which it makes it can, of course, also unmake. This means that the theory of sovereignty fully developed is incompatible with natural law. The totalitarian doctrine is a special form of that, but one would have to describe that more specifically.

(Ques: A side point. Do you feel that insofar as the polis, as you say, could be good or bad, is bad or corrupt, is it then related to modern forms of totalitarianism?)

It all depends. If you take the view of an anonymous, unscrupulous politician in Greece, well he will be as bad as an anonymous, unscrupulous politician now. So the only clear and possible distinction is that between the great teachings. And here, by the very fact that it is a bad polis it is indicated that it is not something by which you take your orientation as a reasonable and decent man. It is not so much the actual distribution of virtue and vice throughout history, which is very hard to establish, ^{but} how men judged of it. Regarding the latter point it is more possible to know something, especially as far as the famous writers are concerned. Is there any other point you would like to bring up in connection with this question which I have tried to discuss up to now--which is, why do we read such books?

(Ques: Indistinct.)

That would be a gross exaggeration and wrong. I only spoke of what is characteristically modern. There are, of course, in modern times quite a few people, as there are in all times, who were in fundamental disagreement with this modern turning away from the older. But repeat your statement.

(Ques: I only mentioned it because Locke is such a modern one and I think he stresses such natural or self-evident truths.)

Sure, just as Descartes does, but what is Locke's whole method? He called it himself, or accepted the expression, the way of ideas. What does that mean? It has nothing to do with Plato's ideas. That means Descartes' beginning, beginning with what is present in the human mind. These are the

ideas in the Lockean sense—the idea of red, the idea of a chair, or what have you. These evidences are all within the consciousness, whatever that may mean. Locke's whole work is called an Essay on Human Understanding and not an essay on the universe or an essay on God or something like that. The common word for that, which I could have used if I had wanted to, is subjectivism. The subject is the great theme—the thinking subject.

(Break in tape)

(Ques: . . . a cosmological world view like that of antiquity. I was wondering if this emphasis is only partial, inasmuch as the modern philosophy of science, e.g. logical positivism, philosophical analysis, or whatever you call it, emphasizes the bifurcation of philosophy into what they call the value theory and the philosophy of science. They are very strictly separated and in many cases the human consideration is called meaningless . . .)

I know. That is a very extreme form, but it finds its place. Shall I give you a graphic presentation of that position? } I have considered that.
(writes on board)

(Ques: In other words it is an emphasis by avoidance.)

Sure. It is still more extreme in this direction than the more average position. Now let us then turn to the second elementary consideration which one must state from time to time.

Granted that such books like Locke's Civil Government must be read and must be studied, how must they be studied? Here one distinction I believe is of special importance. An answer frequently given is that we must study such books "historically". Now what do people mean by that? That would be a meaningless sentence if there were not an alternative way of studying it, that is, unhistorically.

(Ans: Rather than studying them in regard to the school in which several men living several centuries apart would be classed, you would study them in the historical circumstances, their relation to the conditions of the time, what shaped the particular aspects of their work, and so on.)

Yes. It is the background or the setting. We have to understand these thoughts within their historical setting. Well, to take another example other than Locke, in order not to prejudge the issue there; if we had to study Machiavelli, for example, we know of course that he was a Renaissance thinker, and so we have to understand him against the background of the Renaissance. It is a very common view. One question.—How do we know anything of the Renaissance? As scientific men we cannot simply take these things for granted. How do we know of them? How do we know of the Renaissance?

(Ans: Well, through these studies by men like Machiavelli who wrote during the Renaissance. . .)

I see. In other words we know really from Machiavelli and others what Renais=

(unclear)

sance could mean, and then we arrive at certain hypotheses, and then in reading Machiavelli, instead of going on ready¹⁴ we say, "Oh, that's Renaissance." We refer Machiavelli to something which is infinitely vaguer than Machiavelli's doctrine, which we have in his books, can possibly be.

(Ques: Granted this would be true especially of classical antiquity. But for the Renaissance, isn't there a certain amount of things like manor rolls and other writings that were never to be published in quantity--histories of families, genealogies, portraits and so on.)

Surely, but the question is, How do we know that this¹⁵ was of any relevance for Machiavelli.

(Ans: Well, if we were trying to determine some parts about the Renaissance, wouldn't it be of importance to learn that a lot of the bishops were illegitimate children and so forth--and the effect this would have on the church and not being attached to a family.)

But how do you know that this is of greater importance to Machiavelli than the various species of fishes to be found in the Mediterranean? How do you know that? We can know it only if Machiavelli himself is concerned with bishops. And then in case what Machiavelli says about the bishops doesn't make any sense on the basis of what you know of bishops, then, indeed, you are compelled to find out something about bishops. But this is the only correct procedure, and not simply to go out for the Renaissance and expect there all kinds of clues, which may either be no clues at all or else wholly impertinent--like the status of fishes in the Mediterranean Sea about the year 1500.

In other words, the procedure is really circular. We know of Renaissance only by studying such people like Machiavelli, and then we use that result or alleged result for an understanding of Machiavelli. The only way, of course, is to begin by studying Machiavelli himself. There is another consideration which must be considered--the dogmatic assumption that every thinker must be understood from his time. This disregards the possibility that a great man, or a not so great man, may have thought against his time. And then his uniqueness, his rebellion against this thought, would be completely blurred. But the most important, the most simple consideration against the so-called historical understanding is a very simple one. No one would expect that a man would write a history of music if he is not himself a musical man. If a man is completely deaf and in addition, as distinguished from Beethoven, never had any understanding of music would become a historian of music, he would be the laugh of the town. But in the case of the history of political thought, it seems to be regarded as possible that you don't have to care a bit about political thought; you can nevertheless study it. To put it in a very simple formula, if there is not a certain fundamental sympathy between the historian and his subject matter, nothing good can come out of that. If one does not share, say, Locke's concern with finding the true foundation of civil society, these pages of Locke remain wholly mute and obscure. This does not mean, of course, that the form in which Locke himself raised the question is necessarily immediately intelligible to us. We will see that this is by

no means the case. But that means only that we have to seek a bit deeper from the very beginning, and to state the fundamental issue in such a non-prejudicial way that Locke cannot but have agreed with this question, a more general formulation of the question. And we must try to retrace the way from this most simple form of the question to the particular form which Locke uses. I believe I can make this more clear using some examples.

But first let me state the simple principle. The only possible way of a historical understanding of Locke's political teaching is the study of Locke's Treatises themselves. Everything we may know or hear about his family, party allegiance and what have you, is utterly unimportant and can come in in a very secondary manner only after we have understood his book. For example, that Locke had a certain half-Whiggish family tradition is utterly and entirely uninteresting. That his doctrine is Whiggish--if we know that, then we can say, "Oh, he was a bit prepared for that by his dad and granddad." But since we know other cases in which people had Whiggish ancestry and became Tories afterwards, there is no great value to be attached to this kind of explanation. So we study Locke, but still the word historical, which is applied in these matters or in this context, is not entirely meaningless. I will try to explain it by raising the question in this form. Why is some scholarship needed for a proper understanding of such books like Locke's Treatises of Government? In other words, why that which is done in great books programs, of which I am personally very fond; but why is this not quite sufficient? In other words, that we simply sit down, read, argue, etc.--why is something else needed and really indispensable. And not merely to show off as a very learned man, but because you think you can't go on without that. Well, let us take a simple example. Let us look at page 122 (in the edition which I recommended), paragraph 4:

"To understand . . . subordination or subjection."

Now you have read that and the sentences are reasonably clear, but what difficulty arises immediately?--when you read that? After all, to read it as Locke meant it means to read it as if it were addressed to you and not merely to contemporaries. You are thinking about political power and the origin of political power, however you call it; you are confronted with this very general answer--that all men are by nature in a state of nature; that they are all free and equal. You are not simple enough. That is the reason you can't answer my question. Well, the simple reaction would be, he says a mouthful. He doesn't prove that in any way. How do we know that there is a state of nature? Even if, why should man be free and equal? How do we know? And, as you will see when you go on, there is no proof to speak of, of it later. So Locke makes

here an assumption which is absolutely unevident to us, if we do not deceive ourselves. Well, but there is no assumption a man ever made which cannot be understood, which must not be understood. That is extremely elliptical--this statement. It cannot be sufficiently understood out of itself. What do we do in such a case? In other words, Locke presupposes that men grant him that, but we can't grant him that. Therefore, because he presupposes that it will be granted to him, he speaks extremely briefly about it. It is much too brief to be understood. What do you do in such a case? Locke presupposes; that was an assumption, but at some point or other that assumption had to be stated in a non-elliptical way.

(Ans: One could read his other works.)

Surely, that is one way. But may I tell you a secret? That wouldn't help. So what do we do in such a case?

(Ans: Indistinct.)

The ordinary expression or way of explaining this is that there was a tradition on which he built. And we must have some knowledge of that tradition if we want to understand Locke. Now if we go on and read the next paragraph.

"This equality . . . of justice and charity."

We get at least one information: that there was one earlier thinker who Locke regarded very highly--the judicious Hooker. And the judicious Hooker can perhaps be expected to give us some clarification about these very obscure things, although the judicious Hooker, too, is said to look upon it as so evident in itself and beyond all question that he may not have explained it sufficiently. But still, we have at least a bit of light. Let us read Hooker! Now that again is not so terribly difficult because it is sufficient for all practical purposes to read about 50 pages in Hooker's Laws of Ecclesiastical Polity to get all the information needed for a better understanding of Locke. What I am driving at is this. No great thinker is really fully self-explanatory. There is one very obvious reason for that--the terminologies change, for good or bad reasons. And in the moment their terminology has become more or less obsolete, it is no longer directly intelligible. And therefore one has to learn or relearn that terminology, to some extent. But there is no secret or mystery about it. Because ~~I would assert that~~ one can say this--and I would assert this without any qualification, waiting for objection--that there is no great book which I have ever seen in which we do not get from the author the signposts pointing us which other books we should

read in order to understand him more fully. So Locke tells us, Hooker. That is of some help, without any question. Whether it is of sufficient help is a matter we shall consider later. But we have in Locke's case another indication of what we must absolutely read if we want to understand him, and that he gives us in the First Treatise. The first Treatise is directed against the then well known man called Sir Robert Filmer, who wrote a number of books the most famous of which is the Patriarcha, is a criticism of Sir. Robert Filmer. Since this is so, it is necessary or at least desirable to read the Patriarcha, which we will do first thing next time.

But I would like to give you another little example to show you these simple difficulties and how they are in principle solvable. Let us turn to paragraph 15, which is on page 128. We have seen in the passage which we read that Locke assumes that there is such a thing as the state of nature, an assumption wholly baseless in our opinion today. But Locke must have thought it was necessary to assume that. Now let us read paragraph 15:

"To those . . . state of nature."

In other words, Locke was familiar to the view which we hold that there were never any men in the state of nature.

"I will not only . . . where he says /omit the quotation/ But I . . . it very clear."

Yes, now we must see whether he will make it very clear. But you see that Locke here also does something else. He quotes from Hooker, and if you read this quotation and even the context in which it occurs, you will see that the judicious Hooker doesn't say a word about the state of nature. But Locke indicated that. He said, "I moreover . . ." meaning going beyond Hooker, "affirm that all men are naturally . . .", whereas Hooker at most had said that some men are accidentally in a state of nature. Another example of the same type may be found at the beginning of paragraph 13, page 127.

"To this strange . . . it will be objected /am so on/"

Here again Locke draws our attention to something which the judicious Hooker or anyone else did not do. A strange doctrine here means as much as a novel doctrine. That is the kind of thing that can be assumed to be characteristic of Locke—that in the state of nature everyone has the executive power of the law of nature; in other words, he is by nature entitled to avenge crimes against the state of nature. So here Locke himself draws our attention to an innovation which he made and gives us some direction in the understanding of what the peculiarity of his doctrine is. Now a last point, and then I come back to the beginning.

Locke's political doctrine proper has been laid down in this work, the Two Treatises of Government, which were published after the victorious revolution of 1688. The only tolerable edition of that is this one. All other editions reprint the last edition made while Locke was alive with all the printing errors of the same. Some things are wholly unintelligible. For example, the Everyman's Library edition is a good example of this bad procedure. That is the best. A critical edition I understand is now in preparation. Of course there are also the Letters on Toleration, but they deal with the problem of toleration by itself and not with the political problem as a whole. It is necessary, and that we cannot do here with the short time at our disposal, to read in Locke's greatest work, the Essays Concerning Human Understanding, THE FEW passages dealing with the problem of natural law. There are very few of them, and I may indicate them to you on another occasion. It is also necessary to read his book, The Reasonableness of Christianity, which says a lot about the law of nature. But the most important thing now, after the discovery of these useful essays, is to read this book which has no title in Locke's manuscript but which the editor calls Locke's Essays on the Law of Nature. That is really indispensable after it is available to read it. It is wrong to call it essays. These are really disputations. The title of each essay is a question. They are all in Latin, but the editor added an English translation, so it is more appropriate (accessible). It deals with the question, for example, whether there is or there exists a natural law—Yes. All of these (passages) have the same { form.

(End of Lecture)

. . . You said one point which I didn't quite understand because of the rush: what Hobbes said regarding Saul and how it differs from what Filmer says.

(Ans: Well, as I understand Hobbes quoting scripture, he claimed that God was monarch over the Jews at this time . . . (indistinct) . . . but actually the earthly monarch insofar as the Jews could have any ruler was God himself. And he tells Samuel, when Samuel tells him . . . (indistinct) . . . that they have not rejected Samuel but they have rejected him, that is, God. Therefore, when Saul comes as king, as I understand it Hobbes believed this to be a separation; God no longer rules on earth as an earthly monarch and his kingdom is a heavenly kingdom.)

He says that the kingdom of god was terminated with the election of Saul. The kingdom of God does not exist from Saul until the Second Coming. And what does Filmer say?

(Ans: Filmer would claim that whether you consider God as the earthly monarch or Samuel there is a continuity there and a direct line. My understanding is that Samuel, although called a judge, would actually be like a king because he ruled by God's donation of power. And formally Saul was a king and succeeded Samuel but the tradition of divine right is not broken no matter what sort of a ruler the Jews have.)

Of course he will have great difficulties in proving that Samuel was a king. . . . (Indistinct). . . . But that is only a minor point. There was one point where I had difficulties. When you stated the position opposed by Filmer, you called that doctrine the natural right doctrine. Is this Filmer's description of that doctrine?

(Ans: Well, as I understood it he refers to the natural liberty and equality. I thought it was the natural rights idea.)

You are a historian, and therefore this question is properly addressed to you. I am not aware of the fact, but I may have overlooked it, that Filmer ever speaks of natural rights. At any rate he would speak extremely rarely of it. And it is quite interesting that when we read it today this expression natural rights doctrine comes so easily to our lips and not so in Filmer. You see, Filmer wrote very early--1640's--and at that time natural rights doctrines were not so famous under this name. This came in the latter part of the 17th century and in the 18th century. That would just be an interesting example of how this terminology has changed. I don't recall his speaking of natural rights, although he speaks of natural law and of natural liberty and equality. But I don't recall that he speaks as a matter of course of natural rights. There may be one or two mentions which I don't remember, but certainly not in this way. He doesn't call it, I believe, a natural rights doctrine. Now let us turn to the subject.

We must, of course, always keep in mind that this writing of Filmer together with other writings of Filmer which are not printed in this

Laslett

edition but which have been reprinted, most of them, in Patriarcha and Other Political Works of Sir Robert Filmer, edited by Peter Laslett (sp?), Blackwells Political Texts. ^{Here} You get a better edition of the Patriarcha and you get in addition some other writings of Filmer, for those who are interested. Filmer is of importance to us only because Locke directed his Treatise of Government against him.

Before we can turn to Filmer's own doctrine, we must see what is the character of the thesis which he attacked. How does he himself describe that thesis? (page 251)

Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at first bestowed according to the discretion of the multitude.

You see there is no reference, no explicit reference at any rate, to natural right. The government is freely established by the multitude, and therefore the multitude is also free to withdraw the power which it has given to the government. Why does Filmer emphasize the fact that this is a doctrine of school ~~divines~~ ^{divinity}?

(Ans: Well, I believe that Thomas Aquinas had quite a bit to do with this idea. I don't know about the later scholastics, but Filmer claimed they were concerned to advance papal power over the power of the secular monarch.)

What is the relevance of that--of this remark?

(Ans: Well, occasionally in the Middle Ages and even somewhat later there had been disputes between the secular and ecclesiastical arms of the government. England at one times was under interdict at the time of Henry and John for coming into trouble with the papacy over certain regulations of the church. If the pope had some other power he could turn to besides the kings, the people were probably more devoted to religion than the average monarch and they would generally obey the pope.)

What I meant is this. Why does Filmer emphasize this point--that this doctrine, this wicked doctrine, stems from school ~~divines~~ ^{divinity}?

(Ans: Well, England had broken off from the church at that time and any attachment to the doctrine of the scholastics . . .)

In other words, he appeals to the anti-Catholic prejudice. That is important. But what is Locke going to do, if he will take up again as it seems a papalist doctrine. Do you see that this creates some difficulty for Locke? If he attacks Filmer, he takes the side of the papalists. How will Locke protect himself? How can he protect himself--against this severe charge at a time when the fight between Catholicism and Protestantism was so important in England.

(Ans: Well, he often cites the judicious Hooker, who was one of the leading divines of the Anglican church.)

So Locke is able to play that game too. In other words he says an Anglican divine and not a school divine as mentioned here. Now to understand this doctrine -- but this doctrine as stated here, regardless of whether we can find the precise origin, and the thesis attacked by Filmer is clearly underlying the Declaration of Independence, with certain important modifications. For example, when you read this. There is, of course, no statement here, as you will have seen, or no reference here to the individual. That is quite interesting--in the statement as Filmer makes it. You see, "Mankind is naturally endowed . . . discretion of the multitude." There is no emphasis on individual, whereas in the Declaration, of course, all men are created equal--which means each man is created equal with the other. Now

That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed,--That whenever any form of government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, . . .

The question which I'm driving at is this: Is this Declaration of Independence a democratic document? Well, you would have to know what democracy is, of course. Now what is democracy? Well, shall I suggest a very famous man's statement, now discredited by the authorities?--Government of the people, for the people, by the people. Government for the people was the view of almost everyone. That you can have together with absolute monarchy or whatever you want. Government of the people is a more theobetical thesis. That this government for the people has its foot, its original root, in the people; so that even an absolute monarchy is originally established by the multitude. But you can have government of and for the people without having government by the people; For example, if you have government by a hereditary nobility or by a hereditary and absolute monarch. The specific democratic thesis is then, and Lincoln hit it absolutely on the head by saying government of the people, for the people and by the people. That is the distinctive difference between democracy and the non-democratic regime. Now if that is so, what is the position taken by the Declaration of Independence? I read this passage to you again:

That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, . . .

The reference to any form of government means that there are many forms of government and not only democracy. It is perfectly compatible with the position taken by the Declaration of Independence that the government may be monarchic or aristocratic, of course. The whole argument doesn't make sense if the British monarchy is not in itself a legitimate order.

Otherwise it would have been extremely simple to say the mere fact that the British government, British polity, is monarchic and has a House of Lords makes it illegitimate. That would be the strictest democratic argument. But the Declaration of Independence is not democratic. You can say it contains certain democratic elements but not more. It is as democratic and not more democratic than the position attacked by Filmer here. That the government is of the people and for the people, meaning that it has originally been established by the people, but it is not necessarily government by the people. I was surprised to observe in talking to a number of advanced men, advanced in knowledge, that this is not generally admitted. It seems to be obvious. I believe certain people read into the Declaration of Independence other opinions which Jefferson expressed elsewhere. The opinions of Jefferson and even the state papers signed by him are something entirely different from this paper signed by so many other people, where he did not speak as Thomas Jefferson. The position is then this. There is no question that the government must be democratic. The government must originally have been established, at first as he says, according to the discretion of the multitude.

The position is then that men are originally at liberty to choose what form of government they please. And that means that the multitude may establish any form of government it pleases. How is this thesis justified. Filmer quotes a passage from Cardinal Bellarmine (page 253 bottom)

Secular or civil power is instituted by men; it is in the people, unless they bestow it on a prince. This power is immediately in the whole multitude, as in the subject of it; for this power is in the divine law, but the divine law hath given this power to no particular man. If the positive law be taken away, there is left no reason why amongst the multitude—who are equal—one rather than another should bear rule over the rest.

Now that is the crucial sentence. Here it is indeed implied; all men are by nature equal. That is the meaning of the phrase—"If the positive law be taken away. . ." The positive law, of course, establishes inequality, inequality of the governing as distinguished from the governed, the rich as distinguished from the poor, the nobles as distinguished from the commoners, and whichever the differences may be. All men are by nature equal. That is, of course, correctly understood by Filmer; that this is the chief issue. All inequality is conventional, positive. And since this is so, since all are equal, no one has by nature the right to rule anyone else, and therefore all right of men to rule other men must be derivative from positive law—from some positive, in principle arbitrary, establishment. Therefore everything turns on this fundamental premise, i.e., all men are by nature equal. Now what does this mean—all men are by nature equal? We shall see later on that Locke will take this up. We have studied last quarter Aristotle. What does he say to this basic premise? They are not. What does Thomas Aquinas say about this subject? Are all men by nature equal? Where would all men be equal even if Adam had not sinned?—to

state it more radically.

(Ans: No.)

Thomas is, in this respect, in agreement with the Aristotelian doctrine. It would require a historical study to see why some adherents of Thomas, for example Cardinal Bellarmine, accept this equality thesis. That is a somewhat different tradition, but we don't have to go into that.

According to Filmer, no proof is offered by his opponents as to why all men are by nature equal. Did you find any arguments here supporting the thesis that all men are by nature equal?

(Ques: In Thomas?)

In the quotation of his opponent which Filmer gives.

(Ans: Well, the only argument which they seem to use is that since there is no proof from scripture, according to them, or from anywhere that any specific allocation of power was made to one man or to any group of men. . .)

But what about these men, these opponents of Filmer. Let us call them for convenience sake the school divines, although that is too narrow. Does Filmer refer to any argument adduced by these men to prove that all men are by nature equal? Well, common sense speaks against it; men are very different and not only by virtue of law. There must be some arguments. No, Filmer ~~indicates~~ that they do not prove it, that they do not use any arguments. They somehow take it for granted. That does not mean that there is not an argument to be found, but it is not so easily available. Now how does Filmer criticize Bellarmine's thesis. Perhaps we read these three points on page 254.

First, he saith that by the law of God power is immediately in the people; hereby he makes God to be the immediate author of a democratical estate; for a democracy is nothing else but the power of the multitude. If this be true, not only aristocracies but all monarchies are altogether unlawful, as being ordained—as he thinks—by men, whereas God himself hath chosen a democracy.

What about this argument? In other words, God has given the power originally to the multitude. That means God has established a democracy. Why, then, can men deviate from that divinely ordained democracy by transforming it into a kingship or aristocracy, as they can do rightfully according to Cardinal Bellarmine. How would Bellarmine meet that point?

(Ans: Well, the people are given the power, but there is no law that they cannot entrust this power. In the form of government the exercise of power is accidental. It may be inconvenient. They can grant it conditionally.)

But still, is there not a certain difficulty here? Surely, Bellarmine would say that democracy is inconvenient. But why then have a democracy originally divinely established?

is somewhere explicitly

(Ans: Well, if power is granted to the people, is power necessarily identical with government? Democracy is a form of government as I understand it. Civil power being immediately in the people, is that a democracy?)

In other words, you would say this original democracy, this so-called democracy, is not a democracy. It is a kind of pre-governmental state. Yes, that I believe he would answer. Now what is the second argument.

Secondly, He holds that, although a democracy be the ordinance of God, yet the people have no power to use the power which God hath given them, but only power to give away their power, whereby it followeth that there can be no democratical government, because he saith the people must give their power to one man, or to some few; which maketh either a regal or aristocratical estate, which the multitude is tied to do, even by the same law of nature, which originally gave them the power. And why then doth he say the multitude may change the kingdom into a democracy?

I think to answer that question one would have to look up Bellarmine's text and see, first of all, whether Filmer quotes him correctly and, secondly, if he quotes him correctly whether that is not taking advantage of a certain loose expression. As far as I remember, Bellarmine was in favor of a mixed regime. I know the quotation from Hobbes' Leviathan, which is perhaps not the best source for the interpretation of Cardinal Bellarmine, where he says that the right kind of order is a mixed order, a mixture of monarchy, aristocracy and democracy.

(Ques: The quotation from Bellarmine is not accurate, although I don't remember the exact point.)

Is there any important question raised by his criticism of Cardinal Bellarmine? Then Filmer turns to the criticism of Bellarmine's principle, which is that all men are by nature equal. The argument that he uses here on the next page is based on the bible as you can see, and exclusively on the bible. The patriarchs were endowed with kingly power, their deeds to testify, says Cardinal Bellarmine. This leads us into a long question. What would follow from that? If the patriarchs were endowed with kingly power, what authority would this have for political reasoning; I mean, accepting the authority of the bible? We are no longer accustomed to arguments, political arguments, based on the bible, but in order to understand the issue we must consider that. Both sides, Cardinal Bellarmine and Filmer, regard the biblical arguments as valid arguments. Now if it is true that the patriarchs were endowed with kingly power, what follows from that regarding political power in general?

(Ans: Well, since religion was such a crucial question, this would seem to stamp God's approval on kingly power in general . . .)

But still, were these arguments really regarded as decisive in former times. By Filmer, almost certainly, but what about scholastic disputations. What about it?

(Ans: Well, it depends. If it's an explicit proof; very often they would quote scripture simply to show, to bolster the argument and not to give a convincing proof. It would depend on the

way that they were using it.)

Would there not be a crucial difference if the patriarchs actually had this kind of patriarchic, monarchical power of which Filmer speaks, or whether there is an explicit biblical command to this effect? Does this not make an enormous difference?

(Ans: Surely.)

So you see that the mere biblical practice does not yet establish anything, and Filmer assumes that. This only in passing.

(Ques: Wouldn't this also depend upon the status of the natural law in contrast with the divine law . . .)

But what is the official doctrine regarding that relation between the natural law and the divine law.

(Ans: It would be derivative.)

Is this correct? Is the natural law derivative from the divine law as has been suggested in your answer?

(Ans: . . . (indistinct) . . . the divine law would include the natural law; the natural law would be as known by men, by their reason.)

But would it not be simpler to say this: that the divine law qua divine law is distinguished from the natural law?

(Ans: Yes.)

And that the natural law is the law knowable by reason. The divine law as divine law is knowable by revelation, and there is no relation of dependence. You mistake this for the ^{eternal} (?) law, which is an entirely different story, from which all laws are derivative according to the Thomistic teaching. As for your question as far as it applies to Filmer, I believe there is no independent argument based on the natural law. He refers to the natural law more than once, but his chief argument is based on the bible, on the divine law. Filmer's main argument, if I understand him correctly, is this. These men say men are by nature equal and therefore they are by nature free. How does this follow?--if men are by nature equal, then men are by nature free.

(Ans: You would have to equate slavery to the power of one man over another; freedom being freedom from power of one man over another . . .)

^{how} If all men are by nature equal, no man can be by nature the lord of any other man. And that means all men are by nature free. This is the thesis which he attacks. And Filmer's main answer is men were never free; men were always subject from the very beginning. Proof--the bible. All men except Adam were subject to Adam, and by divine appointment this subjection to Adam or the heirs from Adam goes up to the present time. Men never were free; men were always subject to Adam or to the heirs from

Adam. Of course Adam and the heirs themselves were free. Naturally, being absolute monarchs they were free, meaning free of any human direction. That, therefore, is the crux of Filmer's thesis. The natural law argument which he uses is different from the merely biblical argument in this. The first power which men have over men, up to the present day to some extent, is paternal power. And paternal power necessarily becomes kingly power. There is no essential difference between paternal and kingly power, and so much so that the kingly power, which originally is the complete paternal power, then supercedes the paternal power in the way that the king is now more the ruler of the children of anyone than the father of these people themselves. Generally stated, since the paternal power was also called the economical power, which doesn't mean of course what it means now, but means the power of the father of the household, there is no essential difference between kingly power and economical power. And at this point he specifically takes the position attacked by Aristotle at the beginning of the Politics, the position of Plato, or at least apparently of Plato. Do you remember on the first page of the Politics Aristotle makes this remark that the people who say that the power of the father and political power are the same is wrong. That was the view expressed by Plato, and here Filmer in this point sides with Plato against Aristotle.

Then, however, a great difficulty arises. What happens if the royal family becomes extinct? Let us assume that Henry VIII is the heir from Adam as far as people living on the British Isles are concerned, and his line becomes extinct. What will happen.

(Ans: This has happened many times, but I don't think there was ever a time when there wasn't some sort of an heir connected somehow to the family, that some pretense can't be made. Or as Filmer says, no matter who has the power--if it is a usurper or if the true heir can't be found or if it is a commonwealth--it's still not perhaps kingly power but paternal power and supreme power.)

But if the whole thing is established by divine right with the enormous sacredness which Filmer attaches to that, is it not of crucial importance that you are sure that this is the right heir. What about a usurper according to Filmer?

(Ans: Well, that's unfortunate but he still has the power. The power comes with the office. Having a true heir is the best position of course, but the power is in the office of king itself.)

But is it not a very dangerous switch of the argument?

(Ans: Yes it is.)

So that, in other words, is the most massive weakness. He teaches explicitly, and you can see that on page 259 bottom.

In ~~all~~ kingdoms or commonwealths in the world, whether the prince be the supreme father of the people or but the true heir of such a father, or whether he come to the crown by usurpation, or by election of the nobles or of the people, or by any other way whatsoever, or whether some few or a multitude

govern the commonwealth, yet still the authority that is in any one, or in many, or in all these, is the only right and natural authority of a supreme father.

We can leave it at that. That is absolutely fatal to his point. He divorces completely at the end rightful government from being the right heir to Adam. Therefore, why do we need that very dubious hypothesis?

There is another point which we must emphasize with a view to the better understanding of Locke. On the next page at the beginning of Chapter II (page 260)

By conferring these proofs and reasons, drawn from the authority of the Scripture, it appears little less than a paradox which Bellarmine and others affirm of the freedom of the multitude, to choose what rulers they please.

You see, the reasons and proofs are drawn from the authority of the Scripture in spite of the occasional reference as Filmer to the law of nature. The argument is chiefly and decisively meant to be scriptural. There is a parallel to that in one of his other writings which I can read to you.

There never was any such thing as an independent multitude who at first had a natural right to community. This is but a fiction or fancy of too many in these days who ~~blame~~ (?) *believe* themselves in running after the opinions of philosophers and poets to find out such an origin of government as might promise them some title to liberty, to the great scandal of Christianity and bringing in of atheism. Since a natural freedom of mankind cannot be supposed . . .

Since a natural freedom of mankind cannot be supposed without the denial of the creation of Adam--if Adam was created and hence created in subjection, men were always in subjection. I'm not now concerned with the validity of the argument; I only want to emphasize that in Filmer's own point of view the mainstay of his position is the biblical teaching.

Let us turn, then, to Locke for reasons which will appear to you later. In the passage on page 4 we read

For I should not have writ against Sir Robert, or taken the pains to show his mistakes, inconsistencies, and want of what he so much boasts of and pretends wholly to build on Scripture-proofs, were there not men amongst us who, by crying up his books and espousing his doctrine, save me from the reproach of writing against a dead adversary. . . .

So we must keep in mind before we turn to Locke that Locke at least presents the issue in these terms. Here is a political doctrine which claims to have on its side the authority of the Bible and in fact it is based wholly on the authority of the Bible; and therefore it is crucial for Locke to answer Filmer with a scriptural argument. The First Treatise is absolutely essential for that, because he is confronted with

the assertion that no idea of natural equality or liberty is compatible with the biblical doctrine. There is one point which Filmer makes, of which you disposed very elegantly, but which is still, I believe, not so simple. This is a point of really fundamental importance; that is on page 267:

But let us condescend a while to the opinion of Bellarmine and Suarez, and all those who place supreme power in the whole people, and ask them if their meaning be that there is but one and the same power in all the people of the world, so that no power can be granted except all the men upon the earth meet and agree to choose a governor.

An answer is here given by Suarez, that it is scarce possible nor yet expedient that all men in the world should be gathered together into one community. It is likelier that either never or for a very short time that this power was in this manner in the whole multitude of men collected, but a littler after the creation men began to be divided into several commonwealths, and this distinct power was in each of them.

Now first, before we go on, what is the issue?

(Ans: Well, if the individual states existing in ancient times or at the present time had the right to confer sovereignty on any individual ruler as opposed to the whole people of all the world.)

And more precisely, in this argument as stated at the beginning the expression occurs "the whole multitude", what is that whole multitude? If the whole multitude is the human race, that we understand; but if it is a part of the human race, as it is actually meant in this doctrine, what is the cause making this multitude a whole? Do you see this difficulty? With what right does this part of mankind close itself off from the rest of mankind and say, "We constitute a whole multitude." Let us first see how Filmer answers that in the sequel.

This answer of "scarce possible nor yet expedient"--it is likelier begets a new doubt how this distinct power comes to each particular community when God gave it to the whole multitude only, and not to any particular assembly of men. Can they show or prove that ever the whole multitude met and divided this power which God gave them in gross by breaking into parcels and by appointing a distinct power to each several commonwealth? Without such a compact I cannot see--according to their own principles--how there can be any election of a magistrate by any commonwealth, but by a mere usurpation upon the privilege of the whole world. If any think that particular multitudes at their own discretion had power to divide themselves into several commonwealths, those that think so have neither reason nor proof for so thinking, and thereby a gap is opened for every petty factious multitude to raise a new commonwealth, and to make more commonwealths than there be families in the world.

That is the first part of his answer. Do you see the point which Filmer makes? This doctrine is based on a natural right of secession which, if it is admitted, legitimates every secession in every society. You referred to that argument?

(Ans: Yes, I did it by just counterbalancing it against Filmer's argument that there is Adam and one true heir. Locke brings up the point that if this is the case why are there so many monarchs in the world today, and is that legitimate. In other words there are so many princes just as there are so many states.)

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But still that is . . . You anticipated Locke's argument. But still we must see whether Locke's rebuttal has any validity. What do you say to that? Locke says that this scholastic doctrine implies the admission of a natural right of secession, because by nature the only whole which you can allow could be the whole human race. If there is a natural right of secession, that is fatal to every civil society—because there can always be a part which claims that right. How could this argument be met? How could the truth to which Suarez referred by speaking of "scarce possible nor yet expedient" be brought into harmony with the basic assertion?

(Ans: Well, it was scarcely possible or expedient, but one could say that the whole multitude by agreement at one time agreed to divide and to invest power separately.)

But here Filmer comes in and says there is no record whatever of such a peaceful compact by which the whole multitude divided into parts.

(Ans: The division of the people at the Tower of Babel might provide some basis for this argument.)

Let me see how this would fit into the argument. In other words here you would say a divinely ordered dispersal takes the place of that compact.

(Ans: You might say on the basis of what is generally called the contract theory that this compact wasn't made by all the people of the world at one time, but that people in various areas got together and made this compact, and just because everyone couldn't get to the same area the compact was actually made at separate times and in separate places.)

In other words there took place a dispersal in one way or the other—because of the multiplication of the human race—and then it was simply impossible to have one universal government. Therefore there was in fact a separation; the various parts of the human race were separated and there was no difficulty then in these separated states, e.g. the inhabitants of the American continent as distinguished from Europe and so on, in setting up independent governments. But still, is this the whole story? Is there not a difficulty which remains. After all, if

you have a state, e.g. Luxembourg, which is a separate, sovereign state as distinguished from France, Germany and so on, and a part of Luxembourg would want to establish an independent state, what would be the situation? And how would these men argue? In a way I suppose there would be no difficulty; many people today would admit as a matter of course a right of secession, (national) self-determination. But how would these older men have argued?

(Ans: I don't know whether they would have to say that the right of secession is natural . . .)

In other words the very fact that this multitude can be governed by a single government is an argument against this secession.

(Ques: The fact that it can be?)

That a certain multitude is governed by a certain government proves that there is no necessity for this secession merely in order to have government. Then there would have to be a very strong revolution based on the fact of oppression and so on which would justify it. So the argument can be met (made?).

(Ques: Would that not then be open to anyone arguing for absorption?-- that the state ought to absorb and rule over its neighbor if it happens to be smaller.)

Still, I think that argument would also cut the other way and meet the argument just stated. That these smaller people prove to be capable to live under ordered government in spite of its relative smallness. With what right do the others interfere?

Then he makes another point in the immediate sequel which is of some interest. But I think we can drop that and restate it, because it is very clear. The argument being that no government of which we know was ever established by a compact. The attacked doctrine presupposes that the people uniting and making an agreement of some sort established the government. There is no proof whatever that any government originated in such a compact. Locke will have to say something on this subject as we will see, but let us assume that this is correct--that there is no evidence for any such original compact. How would this be answered?

(Ans: Well, the rights of the people were violated (?) at some particular time and have been since.)

But you presuppose something--the rights of the people. What does it mean?

(Ans: Well, the natural right of the people to govern; the freedom and equality of every man which has been slighted by tyrants.)

Alright, let us assume that, but this doctrine which you stated presupposes that at a certain moment government was established--the form of government

as well as also the government--by a compact, to which argument Filmer replies, "There never was any government which was established by compact."

(Ans: Well, what I was getting at was that there wasn't any government at all. A man might come along and take over, but he . . . A tyrant might come along and assume power over a people without any real compact at all; there might be a tacit compact.)

We will come to that. In other words the common answer was this. We have no record of explicit compacts, quite naturally, because these things go back to pre-literary times. But there was and must have been a tacit compact. That ~~was~~ is one way of meeting the point. But how does Filmer reply to that? He does that on page 268...If you have recourse to a tacit compact, then you can justify every tyranny. What is the proof of a tacit compact?--the acceptance of the government in being. But that applies to every tyranny. What he means is the ambiguity underlying the present sociological notion of "consensus". If the explicit consent showing itself, for example, in free elections is replaced by the consensus, this consensus must exist even under the most terrible tyranny if it is not in fact overthrown. So the tacit compact is not sufficient. How could this be met by the people who favor the social contract?

(Ans: Well (indistinct) the people who felt that the rule to which they were subjected was illegitimate and the people who did not feel that the rule was illegitimate . . .)

But why is this thought that these tyrannical governments are illegitimate expressed in the form that this government cannot rest on the social compact.

(Ans: They obey against their will.)

But how do you know? No one dares to say it. Well, there is a presumption made that as reasonable beings they cannot possibly obey. They obey compelled either by force or by deception, as they cannot possibly obey from their own free will. That is behind this contractual (government.) In other words, all legitimate governments must be based on the implicit consent of people as sensible people, whereas in the present sociological (2) A this qualification of sensible people is out. That the majority of the people can be presumed to wish this form of government and this government in being because it fundamentally fulfills the function which reasonable men expect of the government. That is expressed by the thought of tacit consent.

(Ques: On page 259 there was in Filmer an idea that the government is responsible to god and that god can act through the people.)

In subverting a tyrannical government? Which is that?

If it please God, for the correction of the prince or punishment of the people, to suffer princes to be removed and others to be placed in their rooms, either by the factions of the nobility

Doctrine?

CONSENSUS
concept

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or rebellion of the people, in all such cases the judgment of God, who hath power to give and to take away kingdoms, is most just; yet the ministry of men who execute God's judgments without commission is sinful and damnable. God doth but use and turn men's unrighteous acts to the performance of his righteous decrees.

Well, what does Filmer assert here? Every rebellion is illegitimate, even against a Nero—"unrighteous acts!" And yet the Nero deserved that. But that does not make it a right action of the people. The people usurp a right which they never had. In other words, the people in their way are as unjust as Nero. That is the point which he makes here.

(Ques: But yet they, in doing the action, although the action may be unjust because they didn't have the official right to do it, might be carrying out the will of God . . .)

Yes, in the wider sense which even a murder meets in one sense, since it would not have been possible without God having given the murderer the power to murder. One must make a distinction here between two meanings of the will of God; in a way, what God permits, he wills, but not in the same way in which he will what he commands men to do. It would free a man of a wholly unrighteous act. In more simple terms, God can punish Nero in "n" different ways--after death and so on. That people who are oppressed by him and hate him take revenge on him is in itself a new sin. From God's point of view it deserves punishment but it does not yet make the action of the people right. There is, of course, never a trace of an admission on Filmer's part of a right to rebellion or to resistance.

(Ques: No, but still (indistinct) if it please God for the correction of the prince or the punishment of the people to suffer princes to be removed and others to be placed in their rooms, either by the factions of the nobility or rebellion of the people. It seems to me that this is vulnerable. On the one hand, the argument has been given that the people do not have the right to leave the state. In case it has been done, one can give the argument that it was actually the will of god that . . .)

That has difficulties of its own, I grant you that, but that is a difficulty which is implied in every theology and not in Filmer in particular. I mean, no action of man, however criminal, is possible without God in away permitting it. God has the power to prevent it. One must somehow make a distinction between compliance with the will of God as expressed in his commands to men and that will of course which shows itself in the mysterious providential ruling. Some such distinction is presupposed here as by all theologians. That is not a specific Filmerian difficulty. Then you have to make detailed theological studies, but they are improperly applied to poor Filmer, who in this respect simply takes them as generally stated.

(Ques: He says that men who execute God's judgments without commission are sinful and damnable. It seems to me that almost any successful rebellion can be justified not only as an act of god for

which former
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punishing a tyrant, but just in itself. In other words, a fanatic comes along and says he has received the word from God and overthrows the prince; there is no one to dispute this and say he has not got God's permission.)

Oh, he would say this: that no claim of any fanatic can possibly be proved true if it contradicts the word of God, the bible itself. And of course he would get into some trouble because of the Old Testament where there were cases where prophets stood up against the kings, passages to which Filmer in his prudence doesn't even allude, e.g. Elijah and such stories. That is another matter. Filmer's position as he expresses it is simply this. The bible forbids resistance to the king or prince under all conditions, at least active resistance. Passive resistance, which means refusal to obey manifestly immoral demands, is another matter. But active resistance is forbidden under all circumstances. So if a man, allegedly God-inspired, comes and preaches active resistance, we know he is an imposter. That is simple.

(Ques: In other words there can be no commission for revenge under any case.)

— have said the same thing

No. But all divine right kings / (indistinct) and that is not a peculiarity of Filmer. A more important point, important not only for Filmer, is what he said on page 268. But before we turn to that we must not forget that the implication of this social contract doctrine is this. There is first the assembled multitude which establishes the government, but how does this assembled multitude go about it? Answer—like any assembly as we know it, by majority vote. That may also be unanimity but that is not necessary; the majority is sufficient for the establishment. The majority want Mr. X to become the originator of the dynasty, and the others Mr. Y, the majority have it. That is easy. And here is where Filmer comes in. Let us read that paragraph.

As to the acts of the major part of the multitude, it is true that by politic human constitutions it is oft ordained that the voices of the most shall overrule the rest; and such ordinances bind, because where men are assembled by a human power, that power that doth assemble them can also limit and direct the manner of the execution of that power, and by such derivative power, made know by law or custom, either the greater part, or two thirds, or three parts of five, or the like, have power to oversway the liberty of their opposites. But in assemblies that take their authority from the law of nature, it cannot be so; for what freedom or liberty is due to any man by the law of nature no inferior power can alter, limit or diminish; no one man nor a multitude can give away the natural right of another.

Here we have a reference to the natural right.

The law of nature is unchangeable, and howsoever one man may hinder another in the use or exercise of his natural right, yet thereby no man loseth the right of itself; for the right and the use of the right may be distinguished, as right and possession are oft distinct. Therefore, unless it can be proved by the law of nature that the major or some other part have power to overrule the rest of the multitude, it must follow that the acts of multitudes not entire are not binding to all but only to such as consent unto them.

Now what does it mean in simple language? What is the argument of Filmer here.

(Ans: His argument is that the people who don't agree to a majority decision aren't bound by it.)

The majority principle, in other words, is entirely a positive principle, not a natural law principle. The only way in which ~~the natural~~, the majority principle, could become binding would be by a previous unanimous decision, a decision to establish the majority principle. That is what he suggests. That is, incidentally, the way in which Rousseau states the problem. But there is, of course, an alternative way to which he alludes here, i.e. that the majority principle is itself a natural law principle. Do you know of any people who asserted that—that the majority principle is a principle of natural law and not merely one of positive law?

(Ans: Well, Locke in the Second Treatise says it is reasonable; the body of the people must in one way or another and therefore a majority can decide.)

It amounts in fact to the assertion that the majority principle is a natural law principle. The same was done by Hobbes. I suggest that you try to figure this out. Is there any alternative, given the premise that all members of the assembly are equal, except the majority? Try it with a minority. How would it work out? We are an assembly, and the minority will have it. What would happen? I suppose everyone would vote for the opposite. Let us take a simple proposal. What would it be? "All examinations shall be abolished." The minority will be binding. How would you vote? You have the greatest interest that the minority will be in favor of that; therefore, you will vote against it to make sure. In other words, it is only a much more complicated way of getting what you get in a straightforward way by the majority principle. Or what is the difference?

(Ans: I think it is possible to suggest another alternative to majority rule, that is, the suggestion of a veto. Whether it is Calhoun's idea of the concurrent majority or something else, certain people have the right to block action.)

But then the question arises, can you then have any government, any decision? And if there are very good reasons for assuming that people cannot

live together peacefully if decisions are not being made, the simple veto must be excluded. You could say the lot, but the lot, of course, would bring about the same difficulty. And then you can say, still better, you have it by majority vote after deliberation than by the completely blind wish of the lot. So, in other words, there are some arguments underlying the majority principle. But one must never forget the root of the problem is not this, because I believe people would never have questioned the majority principle as applied among equals. As Aristotle indicates, the majority rules everywhere—meaning the majority of those entitled to vote. The question is whether all men are by nature equal or whether all men of a given territory are citizens. These are the political questions. But the formal majority principle was never seriously questioned. People preferred the lot for other reasons. Take, for example, the official doctrine of Athenian democracy as stated by Aristotle. If you have a majority vote for public office, quite a few people do not have a ghost of a chance of ever being elected, because they could only be elected dog-catchers in any society. In order to give them as great a chance as anyone else, there is no other way of doing that but the lot. But that is not a very intelligent notion. The only reasonable way, once granted the equality of all members of the assembly, is really the majority. And that I would say is political neutral, because the question first concerns the composition of the assembly or of the electorate and so on. But once you have not one man rule, you must fall back on the majority principle, given the equality of all members of the commonwealth. You have some difficulty? Is there any point which you want to bring up?

Then Filmer gives a very long argument to prove that there is no scriptural proof for popular elections of kings. Those of you who know a bit of the bible, what is the value of this argument?

(Ans: There might be one exception. After the division of the kingdom, the northern kingdom of Israel elected a leader, or some kind of assembly took place and one not anointed by a prophet emerged from the assembly, having been chosen by the assembly. Otherwise, I think he has a case. Saul and David were chosen by a prophet and the succession followed.)

Well, it was obviously the legal presumption that the son would succeed to the father without any election. But granted, let us assume that the biblical facts are in favor—that in Israel and Judah there was hereditary monarchy and no election by the people of the king or of the dynasty—what is the value of this argument, even on the basis of the biblical position? Because the moment one questions the authority of the bible, one goes out of the circle in which the whole discussion takes place.

(Ans: The value of the argument, to say there was no election, means the principle of election was not present in the people.)

But I believe that the theologians could always have said this—that the case of the elected people is the special case, (Trans. note. Elected earlier in sentence may be elective) and the principles of natural law

cannot be established on this ground. In other words, referring to the distinction between divine law and positive law. The difficulty arises only in this way. If not, the presumption that God gave his elected people the best political order is not very strong. That I think was the issue as long as the political discussion took place on this ^{basis} ~~status~~. And therefore, for example, St. Thomas in the Summa as well as Calvin in the Institutes take it for granted that the polity of the Old Testament was the best regime; the presumption being that God is not likely to have given an imperfect order to the elected people.

(Ques: Could the argument be brought forth also in connection with the contrast between the Old and the New Testament. I don't know exactly in what form you would make it, but one in which the Old Testament example would not be decisive.)

Well, that is a very simple principle--that only the moral law and not the ceremonial law and judicial law is valid for Christians. That was the principle. But, surely, you can read that . . .

(Ques: I don't mean as Thomas would make it; I mean as someone like Filmer might have made it . . .)

No, that it has in itself no legal validity was, I believe, granted by all Christian theologians. So, in other words, there is no legal title to the Old Testament provision in these matters, i.e. judicial and ceremonial matters. In other words, as little as the biblical supper law applies automatically to Christians, would these laws as regarding kingdoms and so on. But the question was this. Is not God likely to have given his elected people the best order? Of course, I remember enough from theology to give an answer to that. Perhaps the Jews were a particularly stiff-necked people. But it is interesting to see that neither Thomas nor Calvin used this way out. And, therefore, that was a relatively powerful argument. We must keep this in mind if we want to understand the pre-history of democracy. The acceptance by the Western world of democracy had to go through this fight, through this fight against the biblical precedents. There was to begin with a powerful opposition to that. Naturally, in the Christian tradition, especially in the middle ages, that was considerably weakened, because the passage in Samuel (1 Samuel 8) to which Filmer refers, where Samuel warns the Jewish people against kingship because of the terrible things the king will do. I don't know whether you remember that passage--how beastly he will treat his subjects. Now this was taken, if I remember well, by the Christian expositors as a warning against monarchy as such. I would have to look up certain things to be quite sure, but in the ^{for example,} this view is expressed, whereas in the Jewish tradition the opposite view was taken, and this view, namely that Samuel describes here the rights of the king--not the king will do these terrible things, but the king has a right to do these things, i.e. to take your sons for his servants and the other things which the prophet mentions there. And this view, this harsh interpretation is the one which is, of course, accepted by Filmer and which

was accepted by the royalists of the 17th century. Whereas Milton, for example, the republican Milton, takes the opposite line.

There are only a few more passages to which I would briefly refer. There are certain arguments regarding democracy which are independent of these biblical arguments. Filmer, of course, is absolutely opposed to democracy. What are the main points? What are the main points in Filmer's argument?--that is, if we disregard such general words as "giddy multitude" and so on?

(Ans: Well, that it breeds corruption and civil war; it can't govern large territories; it leans toward private interests rather than concern for the commonwealth; . . .)

In the first place let us take this one point. There cannot be a democracy ruling a large territory. Now what was the status of this in Filmer's and Locke's time? Was there any evidence of a democracy in a large territory? None. And you know this lasts up to the Federalist Papers, where this is still discussed. Can there even be a republic, to say nothing of a democratic republic, in a county of considerable extent? That question disappears only around the middle of the 19th century. I think in Lincoln's famous statement of how much depends on the Civil War, where he says that will decide whether government of the people, for the people, by the people will not perish from the earth, there is still a recollection of that, i.e. what an unusual thing it is that there is government of the people, for the people, by the people in, at least, large territories. Because Europe at that time was covered, of course, by monarchies; France was under Napoleon and so on. The success of the American experiment was the first empirical proof that a republic larger than a city state is possible. This was all the historical evidence. And he gives some arguments which are very impressive if you think of what one could have known up to 1650 or so; namely, the slaughter of men under the Roman republic in the last hundred years--the period of the civil wars--was far greater than the slaughter of men under the worst Roman emperor. You know, where he rightly says that it was limited to very small groups, and then these mass proscriptions under Marius and Sylla as well as later on have no parallel in that. Here we must see that these arguments were at the time that Filmer wrote not weak arguments. The question [is, did Locke advocate democracy? Was this the issue between them? I believe we can show it was not, but we must see that.

There was one more point. On page 290, paragraph 8, he states

There can be no laws without a supreme power to command or make them. In all aristocracies the nobles are above the laws, and in all democracies the people. By the like reason, in a monarchy the king must of necessity be above the laws; there can be no sovereign majesty in him that is under them; that which giveth the very being to a king is the power to give laws; without this power he is but an equivocal king.

Do you recognize something in this statement?

(Ans: It seems Hobbes himself would . . .)

Yes, but that is even independent of, although Hobbes plays a great role in that. But how is that doctrine called?

(Ans: Sovereignty.)

And Hobbes was the first to develop this, but it was, of course, older. Filmer knew Hobbes by the way; he knew his writings. There is a treatise of his directly explicit on that point. So that is directed against the traditional populist notion, maybe evil notion from his standpoint, that there is a law which is above all government, which binds the king and even perhaps bound them too, or it can only be altered if both king and parliament join to alter it. There is a rule of law proper. That was denied by the theory of sovereignty. That there must be in every society one—king or assembly—which can alter or abolish any law as it sees fit. There is no law which cannot be altered or abolished. That is the simple meaning of the doctrine of sovereignty. And that is, of course, implied in all notions of democracy as we understand it today. Democracy means, then, the sovereignty of the people; the people are free in principle to alter or abolish any law they have given. In the earlier camp, even in Bodin, there were still some qualifications. A distinction was made between law in general and fundamental law, and according to Bodin it was understood the king cannot alter or abolish the fundamental law. For example, the right of succession in a monarchy is a fundamental law; that cannot be changed by the king. British precedent was, of course, against that, against a law binding and making impossible Parliamentary changes in the line of succession. Well, there are all kinds of influences on Filmer and, of course, an influence of this secular thought, the political thought of the 16th and 17th century. But that does not do away with the fact emphasized by Locke, on at least five occasions in the First Treatise, that Filmer's argument is a scriptural argument. And the First Treatise of Locke serves the purpose to dispose of the seemingly biblical basis of the alternative to his doctrine. Therefore the First Treatise is really very important, and the fact that it is today no longer studied is due to the fact that today arguments taken from the bible do not play any significant role in political discussions. From Locke's point of view, and in Locke's time, that was the most fundamental argument which had to be met.

(Ques: Does Locke criticize Filmer at this point for departing from scriptural interpretation? . . .)

How does Locke proceed in the First Treatise? How does he meet the biblical argument?

(Ans: Well, first of all he questions whether Filmer quotes the passages correctly and in context and uses certain interpretations of passages which are opposite to that of Filmer, and then in some cases he cites other passages not mentioned by Filmer. He refutes in that way, within the scripture, I believe.)

So in other words he is really compelled to meet Filmer's argument on Filmer's grounds, that is to say, the bible.

(Ques: I meant on this specific point, where Filmer talks about the king being above the law, because I think you could find using this framework a scriptural refutation of this, for that matter a very strong one. I was wondering if Locke does use it.)

That is easy. Filmer would say, "Of course, the king is subject to God's law. There is no question, but he is not responsible to the people for his compliance with it, but only to God." They quoted the verse from the Psalms where David says, "Against thee alone did I sin", and they took this very literally. Being a sovereign king I could not possibly sin against any human being, but only against God himself. The bible proves that.

(Ques: But the medieval philosophers use the argument of the covenant between the king, the people and God, and I am wondering if this couldn't be used as an argument also to refute this point.)

Filmer says this is school divinity. They are Catholics and England is a Protestant country. That may be, but the question is, of course, how Locke can avoid this, for him, unpleasant compliment. He has, of course, the possibility of recourse to Hooker, who was an Anglican divine, and we shall see really how crucial that was for Locke to have this authority on his side. That Hooker took much of his argument, at least as far as natural law is concerned, straight from Thomas, Locke never mentions. But you only have to read Hooker's own text; you find all the time explicit quotations. That is part of the politics of that argument, which is not altogether irrelevant as we will see because it also plays a role in more theoretical parts of Locke's thesis.

(Ques: I was going to say that in his Essays on Natural Law Locke himself quotes Aquinas.)

We come to that. That is a very beautiful passage, but as the editor or translator notes, this does not mean that Locke read Thomas. It is a quotation from Hooker in all probability.

I will suggest that those of you who read papers on the First Treatise have a look at Filmer's Patriarcha and see how the argument of Filmer looks in Filmer's context, and whether Locke really meets Filmer's points. That would make it more interesting than if you merely read Locke by himself.

You saw very clearly that Locke's argument is surprisingly defective, and therefore we are confronted immediately with this question: Did he write this in a state of complete intoxication?--or was he his normal self? If this latter is the case, then there must be something fishy. You also did very well in bringing out the fact that the definition given on page 111 is the definition. In other words, that in reading anything else we always have to contrast these other statements with this official definition.

There is only one thing. You are on the right track, I believe, but you used the wrong argument. On page 112 you mentioned in passing that when he interprets Aristotle's Ethics the "necessarily" is there.

"... so that these things are necessarily to be done by man which reason dictates."

Necessarily does not necessarily mean physically necessary; it may mean morally necessary.

+ + +

Now before we turn to the discussion we have to say a word about this book. You see that is really a kind of gift in our capacity as historians that something should have come to light from Locke's papers, which contains the only coherent statement ever made by Locke on the natural law. You do not find such a coherent statement in the Treatises of Government nor in the Essay Concerning Human Understanding nor in the Reasonableness of Christianity. That's it, and therefore that is, in a way, the most important Lockean text regarding this subject although it was written so very early and, as our editor points out time and again, that Locke has changed his mind in these 25 years. In a way, yes, but I believe that in the important things not at all, and that will become very clear. You have read the introduction? Well, there are some points that are quite useful--biographically and otherwise. I learned that Locke had two friends more or less his age who wrote on natural law, and the editor traces every agreement and disagreement between these fellows and Locke. But the really important things, e.g. Hobbes, are played down, so it gives you a somewhat disproportionate picture. What is much more serious are the defects of the edition, to which I would like to refer once and for all. Take page 7 of the Introduction:

The collection contains a leather-bound notebook in small octavo, bearing the initials of Locke's name on both the front and the back cover. Inside the cover, as was his usual practice, Locke specified the period over which he filled the notebook with entries--in this case the year is 1663. The booklet contains nine essays on the law of nature, written in Latin and in a strange hand, probably that of an amanuensis. While the last six of these essays are more or less identical with those in MS. A, the first three have nothing corresponding to them in that MS. Between the second essay and the third and between the sixth and the seventh there are titles for yet two others which were never written. In a continuous series Locke attached a number to each

title, to those he merely contemplated as well as to those which have essays corresponding to them. Thus there are twelve titles in all, and nine completed essays.

Now have you followed the numbers? Have you see something? I mean something very superficial.

(Ans: Nine and two don't make twelve.)

Yes. Is it not fantastic? If you edit a book and this means that you have lived with that book for some time, of course, you can't make such a slip. It is impossible. Now one has to go over the whole ground and do the basic counting for one's self and then one finds this. In the first place if one counted as he does there would be twelve and there would be three incomplete essays, but that is entirely misleading. There are eight essays completed and three essays represented only by titles. That makes it eleven, and then there is something which has nothing to do with that--the funeral speech of Locke on the occasion of his own funeral as a censor. This is in the same notebook, but it is an entirely different piece and should not be counted at all. But much graver, Locke as he points out here in a continuous series attached a number to each title, "to those he merely contemplated as well as to those which have essays corresponding to them." And this man has the nerve not to reproduce Locke's authentic numbering. So you see, if you read Essay Seven, that isn't Essay Seven; that is Essay Ten in Locke's numbering. He should not spoonfeed us; he should give us the plain text of Locke. So there are eleven essays and three are not completed. What that means or whether it is mere accident is an entirely different matter, but he has no right to interfere. Now a similar, I had almost said obscenity, occurs at the beginning of the edition on page 108. Let us look at that, the first note.

(Ans: He changes the capitalization. He determines where the word deus stands for a truly theistic conception, and therefore capitalizes . . .)

Yes, sure. In other words Locke wrote the latin word for God, deus, frequently. (One doesn't know how frequently, but that is another thing. But frequently, perhaps in all cases) ~~this is done~~ with a small "d" contrary to usage. And he [the translator] writes it with a capital "D" wherever it corresponds to a truly theistic conception. Now if we knew what Mr. von Leyden regards as a truly theistic conception we might perhaps . . . But since he didn't tell us that (there is only a vague note on page 90 which doesn't help ~~any~~) we get an entirely different notion. Now that this is of some importance you see from this fact. When you read Locke's later writings, the Essay Concerning Human Understanding, Locke speaks there in some passages of God, capitalized, and also of a God. Now that makes some difference, even if capitalized. So Locke did these things with some intention, and we have to trust the editor. This cannot be excused by a passage which is difficult to decipher where every editor would have to guess. That is most deplorable. We will also come across some passages where the translation is really very misleading.

Now if we turn now to the text. In other words this is not a very good edition. It does not comply with certain minimum requirements of editing. That's a pity because this will probably never be re-edited, I assume, unless someone thinks of a critical edition of all works of Locke, and then of course it might be

done. But it is really a pity. I think it is also wrong to call them essays. They have much more the form of disputations. Now let us turn then to the first essay. The plan of this first essay is this. First, Locke asserts in the first paragraph the probability of the existence of the natural law. Second, he gives the names or designations of natural law. Then he speaks about the law itself. In other words he gives his own definition. And thereafter he gives five arguments proving the existence of natural law. Now the beginning is quite revealing. Let us read the first sentence. May I only say one word before you begin. He says "since God". It would be better perhaps to translate "Since a God". We don't know whether Locke wrote here, I believe he wrote with a small "a" (that I conclude here from the note), but let us forget about that because there will be other, better occasions.

Since God shows Himself to us as present everywhere and, as it were, forces Himself upon the eyes of men as much in the fixed course of nature now as by the frequent evidence of miracles in time past, I assume there will be no one to deny the existence of God, provided he recognizes either the necessity for some rational account of our life, or that there is a thing that deserves to be called virtue or vice.

Now let us stop here for a moment. So that is a mere assertion: "God shows himself everywhere present" by the constant tenor of nature now, he says. Alright, and as well as by the frequent testimony of miracles in the past, "I believe there will be no one who will not have admitted by himself that there is a God." In other words, the existence of God will be admitted by all men, is admitted by all men. But then he makes a qualification. He doesn't say by all men, but by men of a certain kind. How would you describe these men who admit the existence of God?

(Ans: Philosophers . . .)

No. I would translate this as follows: "I believe there will be no one who recognizes either that some account must be given of our life [rational life is wholly superfluous here]." What kind of account I don't know—perhaps after death. Some account must be given. ". . . or who says that there is something which deserves the name either of virtue or vice." I believe it to mean men who are morally concerned. All men who are morally concerned will recognize the existence of God, not all men simply. And that I believe is confirmed by the sequel. "For if this is presupposed, which to doubt would be wicked [and not as he translates merely wrong, because wrong could also mean a theoretical error]." It is a wicked action, a sinful action, to doubt. So, in other words, what Locke suggests to begin with is rather that the natural law, no, the existence of God, is recognized by all morally concerned people and not by all men. And that leads to certain difficulties as we shall see later. And what is the argument? Everywhere we find natural law and order—planned stars and so on. Should man be the sole exception; should men alone be lawless? That I also would translate somewhat differently, "absolutely his own master" I think this should be read. This is not credible, that man should be lawless. And it is not credible, I would understand this to mean, on the basis of the moral consciousness, on the basis of moral concern as stated

here.

Now let us see the sequel. That is a fairly long sentence and we can perhaps begin in the middle of the first paragraph.

and there is nothing so unstable, so uncertain in this whole constitution of things as not to admit of valid and fixed laws of operation appropriate to its nature--it seems just therefore to inquire whether man alone has come into the world altogether exempt from any law applicable to himself, without a plan, rule, or any pattern of his life. No one will easily believe this, who has reflected upon Almighty God, or the unvarying consensus of the whole of mankind at every time and in every place, or even upon himself or his conscience.

Do you see that here the argument has somewhat changed? That such a law exists will be recognized by everyone who has given thought to either (in the Latin it is perfectly clear) God, the best and greatest, or to the universal consent of the whole human race at all time and places, or to himself and his conscience. In other words, here he makes the admission of a natural law independent of reflection on God. That is also important. The question with which we are confronted, then, on the basis of the first paragraph is this. Does natural law necessarily presupposes the admission of the existence of God? And what was the status of the question at that time? The editor says something about that. Well, there is a famous passage in Hugo Grotius which goes back to some scholastics. Do you know what it (means?) (it?)

(Ans: Yes, to the effect that even if there were no gods natural law would still hold. . .)

If, which is certainly possible, there were no God there would be a natural law. (Tr. note: possible may be im possible in previous passage.) That was one way, and that was older than Grotius (he mentions a few of the earlier writers). But the predominant view was, of course, theistic (?) Now, where Locke stands is difficult to say. In his definition he emphasizes that natural law presupposes the existence of God, but such an implication, and there are other difficulties to which we will come as we go along. Is this problem clear to you? I mean that natural law, a rule of action knowable by man's natural reason, according to one view presupposes the existence of God, a knowledge of the existence of God, and according to another view, less common, does not presuppose that. But that is obviously a major question. And we will see what its fate is in this Lockean treatise. Now immediately thereafter he gives a clear plan of what he will do now. But before we turn to the law itself and those arguments by which its existence is proved, I believe there will be something worth while if I indicate the various names by which the natural law is designated. Now, then, he gives here three notions of the natural law, common designations of it. The first is Stoic, the Stoics alone are mentioned, and the third is Stoic. The central one is not Stoic. The first is simply

the notion that there is something morally good or honest (honestum in Latin which corresponds to the Greek word meaning something praiseworthy for its own sake). There is no reference to the natural law here as you see. And then the second notion identifies ~~the law~~ as right reason. And as you see in the text he implies that reason does not mean here the faculty of the intellect which forms discourses and deduces arguments, but certain practical principles. In other words, reason in this second view here means the fact that there are principles of action, practical principles, inherent in man by nature. That is something different, or at least in intention, from the Stoic or ancient view according to which there is something praiseworthy by itself, something noble by itself. And the third view, and that seems to be the majority view, what does it say?

by means
of the
natural law
as you see
in the text,

Others, and they are many, refer to a law of nature, by which term they understand a law of the following description: i.e. a law which each can detect merely by the light planted in us by nature, to which also he shows himself obedient in all points and which, he perceives, is presupposed by the principle of his obligation; and this is the rule of living according to nature which the Stoics so often emphasize.

You see this passage as edited and I believe translated by the author would suggest a law to which all men always ~~must~~ obey. Clearly, "cui etiam per omnia se morigerum praestat", "a law to which everyone always in all matters shows himself obedient." A law which man cannot transgress. He notes that the text is doubtful, but he does not suggest any alternative interpretation. The use of praestare (see Ft 4, p 110) would not in itself change the meaning, that is, if you put the infinitive instead of the indicative as he has here. But we will come later to this question in clearer passages. The first problem, to repeat, is whether natural law presupposes the existence of God or not. The second is an ambiguity in the term natural law. Is natural law a law which man can transgress, or is natural law a law which man cannot transgress? And this ambiguity, which was clearly pointed out in the report, is very important for the whole argument.

questions

I

II

Then Locke distinguishes the law of nature from the natural right. "natural right means rightful liberty. And that is the Hobbean distinction. That is the first clear sign of Hobbes' influence which you find here and . . .

(Ques: Why does Locke refrain from mentioning Hobbes at all?)

Hobbes' name was, as he put it later on, justly decried. In other words, Hobbes was regarded as a very black sheep, and he would compromise himself by that. I believe there can be no doubt about that, that this was the simple reason ~~that~~ he did not quote Hobbes. But this is clearly the Hobbean distinction. Whether Locke will make any use of that Hobbean distinction between natural law and natural right, that we must wait for the sequel. It has not yet appeared. Do you understand the meaning of the distinction, because that is of some importance—the Hobbean distinction between natural

why

law and natural right. Do you know the meaning of the distinction?

(Ans: Natural right means that there is an original liberty, a freedom to do something which cannot be removed, whereas the natural law is binding-- to do or not to do something.)

In other words, the natural right is not an obligation. I mean I have the right, for example, to speak freely and say all kinds of things about the present administration, but I am not under an obligation to do so. That's clear. On the other hand I am under the obligation to do or to omit certain things. According to Locke, and especially to Hobbes, man has certain natural rights. He may do certain things without being obliged to do them. There are other things to which he is obliged, and this distinction, which of course is in a way very trivial--that existed at all time, e.g. whether you buy or sell a house which you own was generally left to the will of the owner. There was a right to buy or to sell; no one was under an obligation, except in special cases, to buy or to sell. But other things ~~have their~~ ^{there were} obligation, e.g. to military service or to pay taxes or what have you. But in Hobbes this distinction is emphatically applied to natural law so there is a natural law which establishes obligations and a natural right. And in addition, which makes it really interesting, according to Hobbes the natural right is more fundamental than the natural law. The fundamental fact is the right which I have to do certain things. All my obligations, my natural obligations, my obligations under natural law, are derivative from the primary natural right. You wanted to say something?

(Ques: Do the natural rights imply an obligation for other people, so that ~~their~~ ^{there} exercise . . .)

Alright, even in Hobbes. But that means, of course, the basis is the natural right. Whereas in the traditional teaching, to the extent that a teaching of rights was developed, it's the other way around. Obligation comes first and the rights are derivative. You have a right to your life ultimately, derivatively, because you ~~own~~ ^{have} that life and its proper use, proper virtuous use. Rather than first the right to life without any strings attached to it and then there follows certain consequences. You cannot exercise the right if you do not behave decently to your neighbors. That is Hobbes' argument. There the obligations are derivative in the final regard. But whether that distinction as made here has any significance for the argument of the early essays remains to be seen.

Now then we come to Locke's own definition of natural law, which was quoted by Mr. Goerner, and we must try to understand it. What does Locke say? "He says the law of nature cannot be called the dictate of reason because reason being our own reason cannot command us anything. It can suggest; it can persuade, but it cannot command. Command can come only from a superior who is rightfully our superior. And that can only, although he does not speak here of God, but he clearly means God must be the superior who makes the natural law truly a law. But where does reason come in, since natural law is meant to be the law knowable by reason? Where does reason come in? That the natural law is law only if it is known to be the will of God, but where does reason come in? In two ways. In the first place, the

knowledge that God wills it may be rational knowledge. But more important, the content. Reason tells us what is in conformity or disconformity with, (how does he say it?) the rational nature. In other words, what is becoming to man as a rational being or not becoming, that can be discerned by natural reason. But according to Locke, the realization of its being becoming or non-becoming does not establish an obligation but only a counsel. As it were, you do it at your own peril; if you want to behave like a brute, you may do so. Natural law tells us what it means to behave like a human being or to behave like a brute. But between such a statement, i.e. "Do it at your own peril", and an obligation, there is a great difference. The obligation, according to Locke, stems from the fact that this insight of reason coincides with the will of God, that God wills us to behave not like brutes but like human beings. is clear, isn't it? The question is only what Locke does with this later on. Or do you see any difficulty in this distinction? He uses here a certain scholastic distinction between the formal ground or reason of a law, which is the declaration of a superior will, and the other one, which is the propriety of the law, namely that it prescribes what has to be done or has to be omitted. So, at any rate, Locke has the same freedom to begin with as everyone else; in other words this is the natural law. And that is in itself a provisional definition, which must be established by further argument, but which to begin with does not need any further requirement than to be intelligible, to make sense. Or is there a difficulty which arises already here in the definition prior to any further considerations? What was your point?

(Ans: Mine referred to the problem of its being "sufficiently known to men." It must be sufficiently known, I take it, that it is the decree of a superior will. And he says "that it is sufficiently known to men (and this is all that is needed for the purpose.)"

That is on page 113? (at top of paragraph) But that does not--Oh, yes, that is in the definition. You are quite right. One condition of any law, in order to be obligatory, is that, of course, it be duly promulgated. And the natural law cannot be a law if it is not duly promulgated. And that will be the great theme of the later discussion. I think we turn then to the argument.

The first argument is taken from two passages of Aristotle's Ethics; that you see on pp. 112-113. And in general let us note that in the arguments which Locke uses, in four of them there is no reference whatever to the divine will or even to the existence of God. Only in the third argument does he refer in a way to God. Here he speaks at least of the wisdom of the first artificer (1) which can only mean God, of course. All other arguments merely assert or establish that there is a natural law in a sense, namely, prescriptions of reason as to what is proper for man but not a law proper, if a law proper must have been, must be known to correspond to the will of God. That was the point which you observed too.

There is one little difficulty in the second quotation from Aristotle. This quotation is wrong, as the editor notes on page 112, note 3. But I mention this only as a curiosity. That is the reading which we find in Averroes' commentary. Averroes was a Muslim philosopher of the 12th century,

who wrote a famous commentary on almost all writings of Aristotle, and in his commentary on the Ethics you will find this reading which we have here. This may be due to a misreading or by the Arabic translator or by a bad manuscript, but it may also be meaningful. I note this only in passing. Whether Locke has read this in Latin translation, and it was of course easily accessible in Latin translation--Averroes Commentary--and re-translated it into Greek is a matter of pure speculation but not impossible. So here he [Locke] gives two Aristotelian quotations from which it would appear that a natural law, that the natural law, is a law which is universally valid, and which determines as man's duty that which becomes, is becoming, for man as a rational animal. Then Locke raises an objection, or rather makes someone else raise an objection, and here we enter into the real discussion. What is the meaning of that objection?

(Ans: Natural law is not universally valid, . . .)

The objection is that the majority of men are unaware of the natural law. ✓
In other words, there is a law valid for man as man--the natural law, but the objectors say that as common practice shows, the majority of men are unaware of that law. How does Locke meet that issue? Does he question the fact that the majority of men are unaware of the natural law. No!--an emphatic no. And that we must keep in mind. Locke never questions the alleged fact that the majority of men, and in some times almost all men, are unaware of the natural law. And that raises a very great question. If the natural law is properly promulgated, is it then not necessary that all men, or at least most men, are aware of it? That is crucial for the whole argument here as well as in the later writings of Locke. Do you see that? Because if men do not know the natural law, they cannot be blamed, to say nothing of punished, for transgressing it. To take a simple example like human sacrifices, not an example from our society, if the people have not an inkling that there is anything wrong with that, how can they be blamed? How are they responsible for that? But if there is a natural law duly promulgated, they ought to have known and are responsible. And the same applies, of course, to all other human of action. So Locke never questions the fact that natural law is largely unknown, and this in itself would seem to lead to the consequence that the natural law cannot be binding or obligatory. But if it is not binding or obligatory, it is, of course, not a law. So the question whether the natural law is duly promulgated or not is identical with the question as to whether a natural law exists. Therefore, when Locke makes a distinction in the headings of Essay One and Essay Two, i.e. "Does there exist a rule of natural law" and "Is the natural law knowable", that is a misleading distinction. If it is not knowable, properly knowable, it doesn't exist. Well we should have some discussion. Is there no difficulty? I think there is some matter for talk here. But perhaps we finish at least the first essay to get a somewhat coherent picture.

Now how does Locke meet this crucial objection made here by "some people" as he says. Now the first answer of Locke is that it's man's fault. They could have known. If they are such irresponsible fools not to have

taken the necessary care, then it is their fault. In other words, Locke makes use of a very common notion underlying all positive law. If you transgress a certain law without knowing of that law, the judge will say it was your duty to find out about it. Now is this legal maxim?

(Ans: Ignorance of the law is no excuse.)

Yes. And Locke says here, if people don't know the natural law and admittedly the majority of men do not know it, it is their fault. They could have known it. And now the second argument (page 115, the second paragraph) I believe we should read, since it is a specimen of Locke's way of arguing.

Secondly, I answer that, although even the more rational of men do not absolutely agree among themselves as to what the law of nature is and what its true and known precepts are, it does not follow from this that there is no law of nature at all; on the contrary it follows rather that there is such a law, when people contend about it so fiercely. For just as in a commonwealth it is wrong to conclude that there are no laws because various interpretations of laws are to be met with among jurists, so likewise in morality it is improperly inferred that there is no law of nature, because in one place it is pronounced to be this, in another something different. This fact rather establishes the existence of the law more firmly, seeing that all the disputants maintain the same idea about the law itself (for they all know that there is something evil and something good by nature), and they differ only in their interpretations of it.

Now what does he say here? Is this a good rejoinder?

(Ans: This indicates that even fewer people know it.)

Sure. But he argues as follows. The argument is quite smart in a way. For example, let us say there is very great disagreement among men regarding the human soul. From this it obviously does not follow that there is no human soul. Or take a still simpler example. There might be violent disagreement about the structure of the visible universe. Does this prove that there is no visible universe? Obviously not. The same applies to natural law. But what is the difference between the case of the visible universe and the natural law? The visible universe would be a visible universe even if it is not properly known, but would the natural law be a law if it is not properly known? So, in other words, what we have up to now is only the great difficulty that the natural law is known at best only to a minority of men, and therefore the question of its proper promulgation is raised. And the question of the proper promulgation of the natural law is identical with the question of the existence of natural law.

On this page he uses two strong expressions. In the "stin" on line 8 and 15. He calls natural law here the secrets of nature and a bit later these are called the hidden laws of nature, which amounts to this. The natural law is, far from being manifest to everyone, a very obscure thing. Now he turns to the second argument. These other things were subdivisions of the first argument as you must have seen. Then he turns to the second argument taken

into human conscience. Now if there is a conscience, what is the argument? If there is a conscience which accuses our actions, there must be a law. And sometimes the conscience accuses us without any positive law forbidding the action. Hence there must be an unwritten law--the natural law. What is the status of this argument?

(Ans: In the first place, this establishes that it is a superior will . . . (indistinct) . . .)

Yes, sure. Now that applies to all arguments except the central one--that God is not included in this argument at all. That is true, but what is the specific defect of this argument?

(Ans: In this case he says that everyone passes judgment. Presumably, to do so everyone has to know the law. "Everyone passes on himself" is the sentence.)

Assuming that it is correct that you judge yourself and condemn yourself for actions, and note merely because these actions are forbidden by the positive law. Does this necessarily prove the existence of a natural law? Well, what do the present day social scientists say in such cases?

(Ans: This might just be a reflection of the climate of a particular society.)

Surely. In other words certain things can be regarded as noble by this society. He does not in any way establish that that in the name of which people judge themselves is everywhere the same. Without this the argument is of no value.

Then we come to the central argument, because three is the center of five. I'm sorry. One must sometimes remember that because Locke, as I know from some other writings of his, makes use of that--that what occurs in the center is of special importance. Why that is so is another matter. In such, in other words, in what respect that passage is important; that you must still find out. It is only a general warning that it is specially important. That is an observation for which there is no proof whatever but an observation which I have made many times. And the only explicit statement I know is from textbooks of ordinary rhetoric, forensic rhetoric, in which public counsel is advised in defending a criminal to use the weakest argument in the center. I can see at the beginning everyone listens--the jury at the moment. Toward the end, especially if he prepares it properly and says, "Now I come to the end" (which some speakers say a half hour before they finish) then, of course, everyone listens again. But in the middle we have this period where everyone is drowsy. Everyone who has ever given a public speech or listened to one will bear me out. Now in this period of drowsing there he should bring up the . . . If you apply this example of forensic rhetoric to this kind of rhetoric, it means of course that the weakest arguments, i.e. the arguments which are least to be exposed to public criticism, come in the center. That is the reasoning which makes the transition from ordinary rhetoric to the kind of rhetoric which Locke here employs.

Now this is the only argument, then, in which God is mentioned. But what law does he speak of? He has here two quotations, one from Thomas Aquinas and one from Hippocrates and as our editor helpfully observes they are taken in all probability, or with practical certainty, from Hooker's Laws of Ecclesiastical Polity. Where do they occur there? The first statement occurs in Hooker's statement on the eternal law. The second quotation, that from Hippocrates, occurs in Hooker's statement regarding the law which natural agents observe. Now what does that mean in terms of our problem? The problem is, is natural law of such a character that it can be transgressed, or is it of such a character that it cannot be transgressed. Now what about the eternal law in the Thomistic teaching as accepted by Hooker. Can it be transgressed?

(Ans: By natural agents, no, I wouldn't think, but by human agents in some sense it could be and in another sense it couldn't.)

It could not. It is really the will of God, the will of God as to what actually happens. Eternal law, I do not have the quotation here, but eternal law as eternal law cannot be transgressed. It is only another aspect of the providential order, and as little as the providential order can be transgressed in any case can the eternal law be transgressed. If you do not understand these scholastic terms, you will have to look up the first book of Hooker, Laws of Ecclesiastic Polity, Book I, Chapter 3. It is only a few pages and will be very enjoyable also to read because of the beautiful Elizabethan english. Now what about the law which natural agents observe? Is this a law which can or cannot be transgressed. I think we can say that it is again a law which cannot be transgressed, except in an accidental and morally irrelevant way. Bees construct their beehives always in the same way except accidentally. But there is no morality involved in a defection due to accident from the other. Natural agents move here unwittingly and unwillingly; that is the meaning of the term in Hooker and, of course, in Aristotle. Now from this it follows that all beings are subject to laws which they cannot transgress. And therefore it is reasonable to assume that man, too, is subject to a law which he cannot transgress. Can you give an example of such a law which a man cannot transgress?

(Ans: You have to breathe to live.)

Yes, or digestion, or you can also take laws of psychological association, if there are such laws, and so on. At any rate this has nothing to do with the moral law proper. That is the point which you discerned in your report very well. Now here, by mentioning God only in the argument in which he speaks of a law which cannot be transgressed, Locke reinforces the impression that the natural law proper seems to be rather a law which man cannot transgress; and that would not be the natural law in the sense of the moral law, because that is by definition a law which man can transgress.

Now the fourth argument. What is that?

(Ans: Societies would collapse if there were no such natural law; social life would collapse. The first reason would be that the rulers would have an unlimited liberty to do whatsoever they wished--to cast the form of government any way they wish. The impression is given that it

would be a tyrannical, unjust form.)

There is no protection against this except natural law. Yes.

(But the rulers, on their part, would not be protected either because the people would have no reason for obeying the rulers. He says that the natural law prescribes among other things "obedience to superiors" although he gives no reason why this is part of the natural law. The other basis on which he says society rests is pacts, contracts. Where the fulfillment of those contracts is dependent on human will, there would not be fulfillment except accidentally. If the fulfillment of the contract were in the individuals interest he would do so, otherwise he would not. The obligations here must come from some law.)

In other words, without natural law there would be nothing but tyranny of the rulers and rebellion of the subjects. That is his statement. But we find in fact not always and everywhere are there tyranny and rebellion; hence there must be natural law. Alright; but he said before the majority of men do not know the natural law. How come that if the majority of men do not know the natural law they do not constantly indulge in tyrannical or rebellious actions? What would common-sense suggest as a way out on this basis?

(Ans: It would suggest that it is only common interest, individual interest, that some other arrangements be made.)

In other words, that men do not always live under tyrants and do not always rebel against their rulers may be due to another reason than the natural law. It may be due to calculation, for example. The rulers see it doesn't pay, and the same applies to constant rebellion. So, in other words, in reading these sections one must always keep in mind Locke's admission that the natural law is not known to the majority of men. And then the weakness of the argument appears immediately. You see it especially at the end of this paragraph if you will read that.

The other foundation of human society collapses without the law of nature, namely, faith in contractual things, for it would not be expected that men should keep their covenants which they have promised, where a better condition would offer itself elsewhere, if there were not the obligation of fulfilling contracts established by nature and not by human will.

That's a question. Is there a more convenient condition offered to men outside of society. To put it in Hobbesian terms, is not life under a hero for the large majority of the people more convenient than life in a desert? You say? And so therefore a mere consideration of an expediential nature would be in favor of staying within society, or to use this technical term, of keeping one's contracts. Do you follow this argument?

Now what is the fifth argument. Without the law of nature there wouldn't be virtue or vice nor praise of probity or punishment for wickedness; no guilt, no fault where there is no law. Now read the next sentence.

Everything would have to depend on human will, and, since there would be nothing to demand dutiful action, it seems that men would not be bound to do anything but what utility or pleasure might

momentum, on what a blind and lawless impulse might happen mere chance to fasten on.

Let us stop here. Do good men lack completely all orientation if there were no natural law, if there were no distinction between virtue and vice. Locke adds a qualifying clause.

(Ans: There would be an orientation through utility or pleasure.)

Either utility or pleasure or a blind impulse. The central thing is pleasure. I mention this in passing for those who consider it possible that the central position has a certain importance, but at any rate let us leave it at interest or pleasure. It is not excluded by the argument that interest or pleasure might give men some orientation. Now we know from Locke's later writings, the Essay Concerning Human Understanding especially, that he was "a hedonist" later on. What does hedonism mean?

(Ans: Gauging everything by the pleasure in it; judging or making a scale of your values according to the pleasures.)

Terribly learned. I would simply say hedonism means to assert that the good is fundamentally the same as the pleasant. Good is equal to pleasant, to pleasure or conducive to pleasure. That's all. And that was the position which Locke later on took. But I must warn you. In the last essay here Locke attacks the principle that private utility could be the ground of natural law. Now we must see what he does there. At any rate one can discern in the first essay, judiciously read, a kind of presentation of the natural law with an indication of the problem. (A) Does natural law presuppose the existence of God or not? (B) Is the natural law duly promulgated or not? (C) Is the natural law a law which men can transgress or is it a law which he cannot transgress? These are the three great themes suggested in the first essay, and they throw some doubt on the traditional notion of natural law. Then the consequence seems to be complete absence of moral orientation. But here a suggestion is made that there could be interest without any regard to obligation which could give men the fundamental orientation. So that obligation proper would perhaps come in only by virtue of the positive law. Of course we cannot believe to have settled that question on the basis of these eight pages; but this difficulty appears already here. Now before we turn to the sequel, to the second essay, I would like to know whether there is any point which is sufficiently prepared for discussion. These are very important questions, and I am surprised that I seem to be the only one who senses that. I can't believe that.

(Ans: I have some doubt about Locke's form here, the type of form which he is following in his argument. Is it his intention simply to raise the problems in this first essay?)

No. You see it from the heading. "Does there exist a rule of manners or law on nature? Yes." And then, after having stated the problem, he says that there are the following arguments (page 112, end of first paragraph)-- "If these things are laid down, the following arguments persuade that there exists a law of this kind [meaning a natural law]." And these five arguments are meant to establish it, i.e. the existence of a natural law.

God
promulgation
transgression

(Ques: But he doesn't feel it's necessary to be any more detailed as to the nature of that whole argument. In other words he leaves a lot of loose ends hanging as to the nature of the law.)

The only clear statement as to the essence of the natural law is the definition which was quoted in today's report—that the natural law is an expression of the will of God dictating and making obligatory what is in conformity or in disconformity with man's nature. That's the definition given. Now that such a law fulfilling all these conditions exists is not proven by any of these arguments. On the contrary, the arguments suggest great difficulties, and especially this point brought in in the form of an objection by someone, according to which the majority of men are unaware of the natural law. Locke never contests this, and everything turns . . . That means, of course, the problem of the due promulgation of the natural law. And the due promulgation of the natural law is identical, of course, with the existence of the natural law. That's it.

Now one point which I would like to mention immediately. According to the Thomistic teaching it was never said that all men have full knowledge of the natural law. But due promulgation consists in knowledge of the principles of natural law. Therefore the whole discussion will turn in the sequel around this question: Are the principles of natural law known to everyone? And Locke as we shall see will deny that, and that of course is a complete break. But Locke blurs the issue a bit by not always distinguishing between the natural law as a whole and the principles of natural law. The natural law as a whole, that was not the question. That required the activity of reason, in some cases, of reason of very wise men and certainly not something available to everybody. The question concerns the principles . . .

(Break in tape)

Is the natural law known . . . that is a very long question, and a very great question in Locke. / If the natural law is not known to be the will of God. Take an example. The natural law may tell everyone, every human being, that murdering human beings is bad, wicked. According to Locke's definition that would not yet make it a natural law. — If you do not know that murder is forbidden by God, you see. That is a long question—how far the existence of God and the natural law being the will of God must be known by man. Locke will discuss this later on—the undeniable variety of human customs. For example, think of polygamy and monogamy. Can monogamy be an institute of natural law if in many nations it is denied to be a law?

(Ques: Why not?)

But the question concerns, if the natural law is in principle known by nature must not all men know the wrongness . . .

(Ques: Isn't it that it has to be knowable in principle.)

¶ If we take the example discussed by Thomas in the question on natural law, and that I believe was theft in Sparta or among the ancient Germans. Is this not correct? Now here you have a nation which says theft is good. Theft is

Thomas' judgement: theft in Sparta

according to the natural law bad. And here a whole nation is ignorant of that. So Thomas knew that. What is his answer?

(Ans: That they are potentially able to . . .)

But what is the explicit argument?

(Ans: That these things can be corrupted; that these principles of natural law can be corrupted by men's passions even for quite long periods of time.)

In other words, then the children born in later generations are excused for their ignorance because they really could not, with their relatively weak reason, fight against the very powerful age-old precedents. So, in other words, the variety of human customs even regarding moral principles was, of course, considered in the scholastic doctrines. Nevertheless, a very clear and important, if subtle, difference exists between the Lockean teaching and the Thomistic teaching. Because for Thomas the dignity and truth of the natural law is not impaired by this fact of considerable corruption and obfuscation. For Locke it is completely destroyed by that. We must keep this subtle line clear.

(Ques: I don't see so clearly why it is destroyed by not being known. Certainly many of the arguments he uses presuppose that it would have to be known. (Trans. note: The latter part of this sentence may, on the other hand, read "doesn't have to be known.")

No, that is impossible. I mean it cannot be obligatory if it is not known.

(Ques: I'm not sure if I remember correctly, but does St. Thomas speak of natural inclinations?)

Yes, sure.

(Ques: It would seem to be not so much a matter of knowing.)

In other words, let us put it in a colloquial way, men are instinctively aware of it without truly knowing it. That is correct. Then the question comes down to this question which Locke states in one of these omitted essays (page 158, note)

At the end of this essay Locke added the title of another which remained unwritten, namely, An ex Inclinatione Hominum Naturali potest cognosci Lex Naturae? Negatur. ('Can the law of nature be known from man's natural inclination? No.')

That is the central essay, Essay Number 6, among the eleven. And that is, of course, a decisive device. Locke denies that man is by nature inclined toward virtue. That settles it. In the meantime he will assert it, and then finally he will deny that. He will go through all these motions. But since you brought this question up, we had to mention this already now. That is the real issue. And you see he did not elaborate this most important essay, but he tells us what he would have done in it so we are not wholly uninformed. So that is clear. That is indeed the issue. Is man by nature ordered toward the perfection of man as Aristotle and Thomas and, generally speaking, the scholastic teaching said, or is the perfection of man a mere desideratum

which reason figured out without having any support in man's natural inclination? That is the issue. Needless to say, if virtue or perfection is understood as something figured out by man and not something toward which man by nature tend, the content of that virtue (indistinct) from what it was in the older teaching. So that is the issue. Is this helpful now. You see the problem of how far people agree and disagree regarding moral principles. The evidence there is not conclusive either way. Those who say there is nothing whatever in common cannot maintain what they say, otherwise there would be no possibility of an understanding. Those who say there is a fundamental agreement get into troubles because you always find a very strange tribe which does something very outlandish for which you cannot account. So the evidence is there not very conclusive. The fundamental point in the question concerns the nature of man. Is man by nature inclined--in the old sense of the word has he a bent--toward virtue or not?

(Ques: In that passage where he quotes from Aristotle (the second quote) there is some confusion there between right and law. In the place where he quotes Aristotle he talks about right being presumed to be natural, and then he shifts and uses his argument based on right to that of law.)

It is a bit subtle and for this reason I didn't stress it. You are quite right. But it is a long story, and I will try to make it as brief as I can. Jas (right) is the Latin for the Greek word "just", which, of course, is a word used by Aristotle. To that extent Locke simply follows the Greek usage you can say. But since it occurs in this context, where such a distinction between law and right is made, it suggests all kinds of tricks. But in itself it is of course something very harmless.

(Ques: It would also suggest that he knew about the out of the definition.)

which is left

Yes, sure. He quotes the text here without looking into it. The misquotation of the error is the same as that underlying Averroes. I mentioned this before. So we have now already anticipated a later development of the greatest importance, and that is the question of the natural inclinations of man, which Locke did not discuss in a special essay, but one which we will see he discussed in fact. I will only state to you very briefly his argument. And you will recognize quite a bit of present day social science even. These are not old, obsolete discussions, contrary to what the editor says on the very first page--that the issue is obsolete. Mainly it is this--how do we know about the natural inclinations of man? Answer: we have to look at man. But if we look around we see that men have the most different inclinations, and now let us facilitate things and say, "Let us not speak about the inclinations of all men but only of the inclinations of most men." And then Locke asserts, if he looks around, he sees that most men have a natural inclination to their private advantage and even to their immediate private advantage and to nothing else. So, the natural inclination of man so far from supporting virtue and justice abjures virtue and justice completely. I believe you must have heard this argument, with the use of many more technical terms, in almost every social science course. Here it is. We will come to that later.

Hawley /

Now let us turn to the second essay. I also try to give you the plan. There is first an introduction (the first paragraph) and then Locke distinguishes three possible forms of cognition which he discusses, then, one after the other. The three possible forms of cognition are: inspiration, tradition, and sense perception. In the center is tradition and tradition is the chief subject of this essay, in accordance with that rhetorical rule that the center is the most important--not absolutely, but in the context. And in this essay tradition is the subject. And then at the end he defends the last and most important form of cognition, namely sense perception, against an objection.

Now let us read the first sentence.

Since some principle of good and evil is acknowledged by all men, and since there is no nation so savage and so far removed from any humane feelings that it does not have some notion of virtue and vice, some consciousness of praise and blame, . . .

You see here the vagueness--~~some~~--which would be admitted by every present day anthropologist, of course. Some notion of the base and noble exists everywhere. But if they are different from (place to place) there you are. And also later on--who do not have some notion of virtue and vice. Of course, everywhere things are praised or blamed. That does not prove natural law.

In the first of the next paragraph he ^{first} concludes revelation as a possible source of the natural law because revelation is supernatural and can therefore not be knowledge of the natural law by man's natural light. You found something fishy here?

(Ans: Because what he calls revelation, he says, "supernatural and divine revelation, but this is no part of our present argument. For we do not investigate here what a man can experience . . .

What he can know.

(who is divinely inspired, or what a man can behold who is illuminated by a light from heaven, . . .)

But only what he can know by his natural faculties.

(Yes, but this presumably does not include scripture, at least immediately.)

Well at this point I'm not so sure. He uses these terms which remind more of classical . . . Biblical . . . But that was quite common. You would find this expression also in other "humanistic writings."

(But then when he talks about tradition.)

We come to that later.

(It seems to me that scripture would have to be subsumed under that and not under this.)

(indistinct)

Then we would have a clear contradiction between the admission of revelation. Although revelation cannot be a source of natural law, but it exists, and a denial of that later. But here I am concerned only with the simple . . . But where is the difficulty. If you take the (problem) I think Locke's definition is applicable. It is not ~~strictly a~~ scripture which according to the orthodox Protestant doctrine gives you the word of God. Something has to be added.

(Ques: But what has to be added for him, for Locke, is that you have to establish it naturally, that it is reasonable, and what anyone else says . . .)

No, not here. I mean if you stick to this passage, for example, in Locke's doctrine it must be the inner witness of the holy spirit. That has a character of revelation. It is a personal, although it is not meant that everyone has a vision like a prophet or someone, but there is something which goes beyond the natural faculties and is fundamentally different from them which "speaks" in every pious figure.

(Ques: And it illuminates the scripture, doesn't it?)

Yes.

(Ques: Which illuminates the scripture, and the fact that these words written in scripture were said by Christ, for instance, is taken on the word of the disciples who writes them.)

Yes, but it must speak in each individual, otherwise we will read the bible like . . .

How would this be in the Catholic doctrine? I believe that ultimately . . .

(Ans:

Yes, sure. So in other words when we speak of the tradition I think it is understood that a tradition of the church is not a tradition like every other tradition. So the essential difference between the supernatural and the natural would come in. You are quite right in your guess regarding the section on tradition I believe, but we will come to that later.

Now let us see. Then he speaks in the sequel of the extent of natural knowledge. Here the translation is not very good, but let us begin to read here (page 125).

For all this sort of learning, whatever its extent (and it certainly has made great progress), traverses the whole world and is not confined within any of its limits [Strauss notes this should be translated, "which pervades the whole nature of things and is not circumscribed within the limits of the world; it enters heaven itself by contemplating heaven and has investigated with greater accuracy than formerly spirits and minds, what they are, what they do, by what laws they are bound; this whole knowledge, which is one, comes to us from those three manners of knowing.]

What Locke wants to say, (I think he ^(translator) understood this completely, that this whole knowledge of the bodily or visible universe, of what he calls heaven—which is beyond the world, mind you, although perhaps in ordinary language heaven is part of the world—and mind and spirit, this whole knowledge is one. That this interpretation is correct, and by the way I think it is the only way to account for the text, is proven by the end of the Essay Concerning

Human Understanding, where Locke made this remark. He divides all science into three parts: physics, practical knowledge, and what we call logic. And of physics he says

... it is the ^{knowledge} notion of things as they are and their own proper being, their constitutions, properties and operations. Whereby I mean not only matter and body but spirit also, which have their proper natures, constitutions and operations as well as bodies. This in a little more enlarged sense of the word I call ... or natural philosophy. The end of this is bare speculative truth, and whatsoever can afford the mind of man any such i.e. speculative truth falls under this branch, whether it be God himself, angels, spirits, bodies, or any of their affections . . .

[So, in other words, Locke deliberately reduces, or denies the distinction between physics and metaphysics, and makes that all part of one science. And he does that already in this early writing. I cannot go into the history of this distinction but it is certainly remarkable. Heaven can here only mean God, because it is beyond the world obviously. It does not confine itself within the limits of the world. That cannot be the sky as the translator says; it can only be God. And spirits he mentions here, too. But, at any rate, this may be of some importance for later consideration. But we must note this here.

Now he comes to the three ways in which we could have acquired natural, i.e. not supernatural knowledge. These are inscription, tradition, and sense/experience. Inscription is rejected in a relatively brief paragraph, but he will devote the next essay to it, so we will come to that later on. I mention only one fact which is important. He says here (bottom, page 124) that inscription would be the easiest and most convenient method of knowing natural law. In other words, if the principles of natural law were implanted in our minds, that would be the best way. But it isn't; it doesn't exist. The best way is not available. On the same page, earlier, he calls this way, "that would be a benefit of nature." How does he translate benefit?-- a good deed--a kindness of nature. This kindness does not exist. We are more toughly treated. We must work hard. This will come out later, but I note this theme already now.

So there are no innate principles. That is merely asserted. And then the main argument is that tradition cannot be the way toward knowing the natural law. That is a very difficult passage, and at my first reading I had the same impression which you apparently had in your report--that this amounts to a tacit denial of the possibility of revelation. But on my second reading I was not sure that I was right.

(Ans: At least, the relevance of revelation.)

Yes, but that is the same thing. You cannot assume revelation and say that it is irrelevant. No, that is obvious....So what is the point then? Can you repeat your argument?

(Ans: From tradition, you take it on the basis of what someone else reports to you in one way or another, which ~~isn't saying~~ you take it on trust. And therefore, number one, it is not innate, you don't establish it yourself, and it is less strong than that which you establish yourself.)

Yes, but more simply. You simply do not know anything of natural law. You know that Mr. X, whom you respect highly, told you this is good. What you

know with certainty is that Mr. X says that. You do not know that this is good unless he proves it to you. But then Mr. X is only an uninteresting vehicle.

So tradition as tradition cannot be a source of knowledge of the natural law. It can be of course a source of knowledge of assorted facts, that is, of certain facts. But there is something else which I believe he indicated that you also seem to have seen. He starts first as follows. Tradition cannot be the source of natural law because there is such a great variety of traditions in general. Secondly, within the traditions there are varieties of interpretation of the tradition. So you have not only the variety of traditions, you also have the variety of interpretations of traditions within the traditions. So tradition does not look too promising as a way to knowledge. And that I think was the first argument. Now what about the second argument.

(Ans: I think we have covered that. It wouldn't be knowledge . . .)

Yes, it would be faith as he puts it, faith and not knowledge. And the third argument.

(Ans: It must have been started by someone. It wasn't always tradition. Whoever started it got it by either of the other two ways.)

So traditions necessarily presuppose a way of knowledge that is not tradition, and therefore under no circumstances can tradition be the source of natural law. Now he concludes this by saying (page 131)

. . . if there is a law of nature (and this nobody has denied), it cannot be known in so far as it is a law by means of tradition.

In other words you can know by tradition that this is not nice, because your parents told you and your teachers and so on. You do not know it separately; as a law it can never be knowable in this way. Why does he make this addition "qua law" because my explanation is not sufficient as we will see. I mean does not the same apply also to this proposition. -- This does not become a human being, it is unbecoming for man as man. According to Locke this is not a law. Also that cannot be known by tradition, because tradition merely tells you it is not nice. People say it is not nice. But whether they are right or wrong the tradition as such cannot tell you. Why does he add that?

(Ans: I just looked back at the definition, the central definition, of this law which he gives. As such, presumably, it would not be known to be true as law . . .)

What would this mean? That if man believed in the divine origin of the natural law--but this divine origin is known only by revelation--is that what you mean? They would not know the natural law. Because they would know that this law corresponds to the will of God only by revelation. But such knowledge that it is the divine will is of the essence of the natural law as natural law. That may be. I must think it over.

Now here you see, by the way, another characteristically Lockean thing in this little paragraph which we read. Is there something which is very striking, not to say shocking?

(Ans: This little remark that no one has denied the existence of the law of nature.)

Why is this shocking, or ~~frightening~~ striking?/).

(Ans: Because he presented previously one argument against the existence of the law of nature.)

That would not be good enough. Let us turn to that passage (page 113) and read the first line.

Some people here raise an objection against the law of nature, . . .

Let us always be exact. Locke, in other words, knew very well that there were people who denied the natural law, and yet he has the impudence to say a few pages later that no one has denied it. It is a bit weakened by the use of the subjunctive, but still it amounts to the same thing. What does he achieve by that, because we will find more examples of the same kind as we go on, that is, where he says "No one has denied that" and he himself says before or after that people, maybe many people, have denied that. What does he achieve by that? He is a great politician. Well, what is the consequence if someone makes such a remark like this.

(Ans: It seems careless for one thing. It gives the impression of forgetting what he has said before.)

Yes, but what is the effect.

(Ans: He puts you off your guard.)

Locke's 'rhetoric'
Sure. He confuses the issue by acts of kindness. That's not an issue, he says. Everyone admits natural law. Well, that is of course a soporific statement. If everyone admits it, then there's no question. I have not found this used by any other writer as frequently. As a matter of fact I would not remember a single case where any other writer uses this soporific device. And that creates the impression of a kind of sleepiness, good-natured sleepiness, which Locke makes at a first acquaintance; at least he made that on me. You know, a kind of common-sensical bonhomie. And this is one way he achieves that. Well, we are all good fellows and so on.

(Ques: In the Epistle Dedicatory of his Essay on Human Understanding he talks about contradictory arguments and how it may affect the palates of different people, and therefore he is going to season his, these arguments in different ways. This might be one indication of this.)

I don't remember that, but I know it from his practice. I mean in the Reasonableness of Christianity and in the Essay Concerning Human Nature in crucial passages he always says, "Everyone admits that" and in other passages he clearly says that these are very controversial points. So he knew that already when he was thirty four. He could go far with that, in the world. Now let me see whether there is any other point which we should mention.

The conclusion is, then, from this argument tradition is not the way to knowledge of the natural law. Inscription, as will be shown in the next essay, is not the way to the natural law. Hence there remains only one way-- sense perception. But what does that mean? Can the natural law be seen or heard or, as he even indicates, touched. Obviously not. It means that by sense perception and reasoning on the basis of sense perception we arrive at the knowledge of some god (page 133), the author of all these sensibly perceived things. Once this is established there necessarily follows the universal law of nature by which the human race is bound as will appear in the sequel. So, in other words, the demonstration of the existence of God is the necessary and sufficient condition of the proof of natural law. Therefore, what we have heard in the first essay can at most be arguments of probability. the proof goes via the proof of the existence of God. It is

clearly stated. This is not only the necessary condition; it would seem from this passage that it is also the sufficient condition. Once this has been established it follows necessarily. And Locke contends that this is the only way of establishing the natural law--the proof of the existence of God starting from the sensibly perceived things. Again a difficulty arises as we see from the next paragraph.

of ours 1 Against this conclusion / "this our view" Strauss indicates would be more literal translation / ~~of course~~ the following objection readily presents itself: if the law of nature becomes known by the light of nature, how does it happen that where all are enlightened there are so many blind, since this inward law is implanted by nature in all men? How does it arise that very many mortals are without knowledge of this law and nearly all think of it differently, a fact that does not seem possible if all men are led to the knowledge of it by the light of nature?

You see here he does the same thing in the second essay which he did in the first. The crucial difficulty is brought in as an objection of someone else. In the rejoinder he does not question the fact of very general ignorance of natural law; he only questions or seemingly questions the interpretation. Now how does he meet the issue? Most men do not know the natural law, and yet the natural law is obligatory. How does he meet that issue? You see that this is really crucial, because if the natural law is unknown to most men it is not properly promulgated. And, therefore, it cannot be a law. It is a question of life and death. How does he meet it?--in this section?

(Ans: They have to equip themselves to know it.)

In other words, God demands of men that they acquire by their effort the knowledge of natural law. If they do not know it, that's their fault. The law is duly promulgated, therefore, but men do not take the trouble. Now there arises this difficulty. Before men can be found guilty or blameworthy for not taking the trouble, they must have some information about the necessity of taking the trouble. They must perceive this. That of course is not even mentioned. But there is another point which I believe is more important--a very brief note on the next page. He gives a comparison (page 133).

The nature and properties of figures and numbers appear obvious and, no doubt, knowable by the light of nature; yet from this it does not follow that whoever is in possession of mental faculties turns out a geometer or knows thoroughly the science of arithmetic.

Just as arithmetic and geometry remain true however small the number of competent mathematicians, in the same manner the natural law remains true no matter how small the number of knowers of it. But this has the difficulty that the natural law is much more vague than mathematics.

every Careful reflection, thought, and attention by the mind is needed, in order that by argument and reasoning one may find a way from perceptible and obvious things into their hidden nature. Concealed in the bowels of the earth lie veins richly provided with gold and silver; human beings besides are possessed of arms and hands with which they can dig these out, and of reason which invents machines. Yet from this we do not conclude that all men are wealthy. First they have to equip themselves; and it is with great labour that those

resources which the world in general has to be brought to the light of day. They do not present themselves to idle and listless people, nor indeed to all those who search for them, . . .

You see he compares now the natural law (a) to knowledge of mathematics and (b) to digging for riches. What is the . . . the point of view with a view to which the comparison is made? In both cases the things are hidden; the mathematic truths are hidden, the riches are hidden, the natural law is hidden. Therefore, it is by nature difficult of access. Now what he says here at the end of the passage which we just read is this. Some people are just lazy and they don't deserve to be rich. But what about the others? There are some who search and don't find. What would be the parallel to that in the case of the knowledge of natural law?

(Ans: Some men can't prove the existence of god . . .)

No, I mean human qualities. The idle are in both cases the same. What corresponds to the vain seeking for riches in the case of the vain seeking for the natural law.

(Ans: Indistinct)

Yes, lack of intelligence, and lack of intelligence of course excuses. But there could be something else. I mean, is intelligence the only condition for reaching knowledge?

(Ans: Some dig for riches and there aren't any riches there in the first place.)

Yes, you must have seen that in a movie. But let us see this other. That intelligence is a condition for having knowledge is true, and some people are not able to. But that is not sufficient. A man may be very intelligent and . . .

(Ans: He is misdirected by society. He could be in a society in which every body does things which are so far off that he doesn't think . . .)

Then you could say it is the fault of that society. But is there not a more obvious thing?

(Ans: Indistinct)

Then you could say that is in a way together with the sense good. But I think that is only a modification of understanding. But something very obvious--Aristotle speaks of it all the time. What is the most obvious condition of science, philosophy or other/critiques of this kind?

(Ans: A good society, leisure . . .)

Leisure. Well, is there not a presupposition of leisure?

(Ans: Some wealth.)

Some wealth, surely. If you have to work hard sixteen hours a day you will not be able to be studying of the law of nature, to use a term which looks used later on. And therefore the question of the kindness of nature, to which he has alluded in a long passage, is so important. If nature compels men first to establish a basis for any higher pursuit, like being stingy to men, then the majority of men may be ignorant of the natural law without any fault of theirs. That's the point. I remember passages from later writings where he says that such and such people expect every spinster and dairymaid

in England to be a knower of the natural law. He didn't mean that the spinners and dairymaids are particularly lost in spiritual darkness; he simply meant they do not have the time for that. It applies to some males, the opposite numbers, which he also mentions there. This theme, I think, will become clearer from what he says, or suggests, regarding the so-called state of nature in the Treatises of Government. If the state of nature is one of plenty, there is no problem. And Locke seems to say it is a state of plenty; but he also seems to say in other passages that it is a state of great poverty. And then the opposite conclusion follows. That is, I believe, the only relatively clear passage, at least which I remember, in which Locke indicates that ignorance of the natural law may be without guilt or fault. And that is of course crucial for the whole argument.

In closing I would like to mention only one point which came up today occasionally, although I don't remember in which connection. The argument of Locke proceeds in one way as follows. Here in the second essay he says there is one condition of the natural law--the existence of God. In the fourth essay he will say there are two conditions, explicitly. This is a subdivision of the problem. There is not only the existence of God, you also have to know certain attributes of God, a further distinction. Then still later on he says a third condition is required. I think you mentioned it in your report, i.e. the immortality of the soul. While he presents something like a demonstration of the existence of God and of the attributes in question, he does not even attempt to give a demonstration of the immortality of the soul. And, therefore, the whole thing stands absolutely in mid-air.

conditions
of
Natural
Law

(Ques: In the definition of law which he gives on page 111 he indicates nothing with respect to reward or punishment. In the fifth argument he suggests, it seems to me, that there must be reward or punishment or nothing will be obeyed. Therefore it would seem that reward or punishment is an integral part. . .)

Well, he says it later much more explicitly than in this passage. No law without punishment. And that means of course these punishments must be after death. He makes it clear. In other words, I believe we will see when we are through that the position presented in this book is in no important way different from that presented twenty five years later in the Treatise of Government and in the Essay Concerning Human Understanding. I mean the negative position is the same--the rejection of the traditional natural law teaching. What is of course missing is the elaboration of the new kind of teaching and especially the issue of property, which is such a crucial premise in the Treatise of Government, barely emerges. It is perfectly possible that Locke, at that time, had not yet thought of this particular brand of doctrine, which he developed later on with such tremendous success for many generations. But this material is of very great help for the understanding of Locke, because here is really the only coherent presentation of his natural law teaching. ✓

(End of lecture)

I had one difficulty. I share your general suspicion, but that is not the point. Here you present to us today the central argument of Locke proving that the law of nature is knowable by natural light via the demonstration of the existence of God. Now your reasoning, at the end especially, was based on the assumption that this demonstration is not good or at least is not good according to Locke. This I didn't see clearly. Do you believe it is not good in itself or do you believe it is not good according to Locke, because we are primarily concerned of course with the latter--with how Locke understood this.

(Ans: I believe both.)

Well, alright, but let us stick to the Lockean angle. What evidence do you have for assuming that Locke did not believe in the goodness of this demonstration?

(Ans: I wouldn't go so far as to assert he didn't believe in it)

Well, show me a (case in which) this appears unambiguously. If you say that Locke asserts all the time that the natural law is unknown to the large majority of men, Locke would answer to that: Of course, they don't know anything of the beauties discovered by Galileo and Newton. They are not physicists. But now we know. Of course you have to be a properly trained man to have true knowledge. So, in other words, a tiny minority knows of the natural law, and perhaps only since the 17th century. That is not an absurd position. I mean it is at least possible (as a position.) People talked about the natural law all the time. They divined it in a way in the past, but now we can establish it on a solid foundation by virtue of the great progress made in natural science. What would you say to that?

(Ans: My reference to the long passage about God was to indicate that he doesn't really pursue the argument. At least I had the thought that he lost faith in it; he gave it up. He didn't derive men's obligations from reasoning about the will of God, but he snuck back in with this . . .)

But you see that is in a way very shrewd of you, but it is also a capital crime. Because these impressions, you see, are not the real proof. You see that. But I believe there is some real proof in the text which we are discussing today, and we will take this up when we come to it.

There are two points which you made which I found specially interesting. Locke returns to what the translator calls the primitive people (although Locke means the barbaric people) and they are the men who really live according to nature according to Locke. There was a time, I believe in the 19th century, when these primitive people (or pre-literate, underdeveloped, etc.) were called natural nations. I don't know the English equivalent of the German term *naturfolke* (sp?). Is there an English term?--natural nations, natural tribes--applied to these primitive peoples? At any rate that is what Locke implied. These savages, they are the really natural people. What would Aristotle say to that proposition?

(Ans: Indistinct)

But they are not really natural; they are defective. They cannot even develop their reason properly. So they are as little natural as an embryo is natural, natural as a undeveloped human being. Therefore you cannot call this the

natural state of man. That is true. Then you said something else which I also found interesting. You spoke of Locke's derivation of all knowledge, of literally all knowledge, from sense perception. And then you raised the general question, how can there be any moral principles if the only source of all knowledge is sense perception? Is there a way out?--from this dilemma which is legitimate? Is it possible to build a moral teaching on the premise that all primary knowledge is sense perception, and therefore all primary moral knowledge? ✓

(Ans: It would be a kind of hedonism.)

Locke's Hedonism
- sensualism ✓

Not a kind but a very massive one. Bodily pain and bodily pleasure are the fundamental moral data, and all moral teaching is simply a development of that, to get, for example, a maximum of such pleasures and a minimum of such pains. So, in other words, there is a certainly intelligible connection between Locke's so-called sensualism and his hedonism. Now let us turn to a coherent discussion of today's assignment.

The plan of the third essay is very simple. First the problem is stated: Is the human mind primarily a tabula rasa or does it contain by nature some practical propositions? Does man from the moment of his birth have certain practical propositions, or at least practical principles, stamped upon him, or is all knowledge literally acquired from sense perception. And then the bulk of the essay consists of five arguments again, disproving that there is anything innate, and in particular that there is an innate natural law. Now at the beginning of the essay (page 137) we will see that Locke raises here the enormous claim that he has already proven that there exists a natural law and that it is knowable by the light of nature. Now that has already allegedly been established, and of course nothing of the kind has been. In this discussion here (although that of course is not noticeable in the translation) Locke begins to speak of the soul, in Latin, anima. If you will go through the text you will see (as far as my double check has shown, at least, although this is not sufficient) that the word soul did not occur before. So the whole question of the soul comes up in the context of a notion of "imprinted", or more generally stated, of a structured being. The soul, if we can call that soul which Locke admits, is no longer a structured being; it is a kind of board on which things impinge, it has no depth. And it is of some interest that he uses the term soul in this same context. And it also prepares a further problem to which we come later.

Locke and Descartes

In the note on page 136 you see that Locke had originally a reference to Descartes, which he then deleted. That is of some importance for the understanding of the whole essays. Locke knew Descartes by that time of course, and there is even some proof that he accepted crucial things. The term "idea" in the Cartesian sense occurs at least twice in these essays. Later on Locke made the remark, which I wrote on the flyleaf of my edition of the Essay Concerning Human Understanding, "I must always acknowledge to that justly admired gentleman /namely, Descartes/ the great obligation of my first deliverance from the unintelligible way of talking of the philosophy in use in the schools in his time." So Descartes was the great deliverer. That was settled I'm sure already by this time. But also, as becomes clear from this reference here, Locke rejects from the very beginning the characteristically Cartesian notion that there are innate ideas, and in particular the innate idea of God. So this structure, following the lead given by Descartes and yet deviating from Descartes in the direction of a consistent sensualism,

seems to have already been settled by the fairly young Locke. And here the kinship with Hobbes is obvious. But this only in passing.

Now we can't go into all the arguments, but at the beginning of the second argument (page 137, last paragraph) you see that Locke mistakes the issue completely. "If this law of nature were as a whole impressed on the soul by nature at the very birth" Now, of course, no one had ever asserted that, except potentially, namely, that you can deduce from the principle. But here it seems to be implied that every child is born with a perfect and code of the law of nature, as he puts it. That is of course not the real issue. We have discussed that last time, that the real issue is the question of natural inclinations or the existence of natural inclinations, and not of a fully developed knowledge in any way. As was pointed out in the report, Locke indicates it is not possible to explain the factual ignorance of the natural law as a consequence of human guilt. You see that is in contradiction to what we have seen last time. Locke states the issue as follows. The natural law is obligatory on man, on all men, always and perpetually. And yet most men are ignorant of the natural law. How is this possible? Is it not a cruelty to impose on men a law of which they are ignorant? Locke says that man's ignorance of the natural law is due to his guilt. Now one way of putting it is to say it was due to the Fall. Adam knew the natural law when he fell, and as a consequence of his fall men are now completely, or to some extent, ignorant of the natural law. What is Locke's argument regarding the Fall?

(Ans: Well, that that argument doesn't hold, primarily because either some of the principles were effaced or they were all effaced, that is, the principles of natural law. But if only some were effaced, then why doesn't everyone agree on what was left. If they were all effaced we have no natural law.

ignorance -
guilty or
innocent

Yes, that is what he specifically says. But now if you connect his denial of the relevance of the fall with this general problem, cannot one say that he here excludes the explanation of ignorance of the natural law by the fall. And that aggravates the difficulty. If men are ignorant of the natural law and if this is not guilty ignorance, what kind of ignorance can it be? That is the simple analytical proposition--innocent ignorance, ignorance imposed on man. And therefore you cannot speak of a universal obligation of the natural law. Do you see? If the natural law is to be discovered by reason, at least discovery takes place in the 17th century, all men prior to the 17th century are of course excused. That was individual ignorance. Do you see what generally is the way in which modern man tries to solve the problem, which of course exists if you state it in general terms--the moral responsibility of man (if you don't want to state it in terms of the natural law). What about the moral responsibility of people engaged, say, in human sacrifice? Well, I'm not speaking now of what the social scientists say, because we know what they would say, but what morally concerned people would say, those who do not accept natural law. You see that is what I think is one of the important differences between the conception of morality in terms of natural law and the understanding of morality in terms of ideals. Now if morality as a whole has the character of an ideal, and it is implied that not only is the realization of the ideal in the future, maybe in the infinite future, but even the knowledge of that ideal, and therefore there can be no question of guilt. Ideals are not obligatory and that is one reason why they enjoy such a good press in modern times. Natural law is meant to be obligatory. To come back to the immediate context in Locke, Locke rejects here one easy

ideal vs
natural law

understanding

way out for him. Men are ignorant of the natural law and this ignorance is due to human guilt--the fall. He rejects that, and that aggravates the problem. In the translation, by the way, there is no mention of Adam in the text, but of "the first man or his fall" and not "and his fall" as the translator says. Because Locke generalizes the problem. People could think of a first man without thinking of Adam, to say nothing of Adam's fall. I mention this only in passing, that it is really necessary to make such distinctions. Do you know of people who admitted a first man and no fall? You see, you must not forget what we today are apt to forget--that the idea of a first man is extremely hard. That means a man not generated by a human father and mother. We have become accustomed by Darwinism to take this in our strides, but it is really a very difficult problem. Now Aristotle of course solves this problem in his way, which was very elegant, by indicating there never was a first man--infinity. But there were people who said there were first men, apart from the biblical teaching where divine creation put the problem on an entirely different basis. There were philosophers who spoke of first men. We must never forget that.

(Ques: Wasn't there a mention of a first man in some of the Platonic myths?)

But then we don't know whether myth is . . . But the Epicureans, very simple, the Epicurean doctrine of (causation.) All those who deny the eternity of the visible universe admitted by implication a first man. That one must always keep in mind, and it is of some importance.

Now we turn to the central argument of this section. The more natural men are, Locke says, the less do they know of natural law. In this connection on the next page he gives a brief . . .

(Break in tape)

. . . don't rest on natural law principles and this unknown origin can be made clear by simple (indistinct) of the body which, namely, the constitution of the body, alone is admittedly the difference between wise and foolish people. He completely misconstrues that. The translator simply didn't understand the sentence. Locke appeals here to two principles, two principles which create a difficulty. The first is that the mind is wholly independent on the constitution and structure of the body. To what extent was this accepted, this view? Well, in the Aristotelian teaching the mental acts are radically incorporeal acts. A mental act is a radically incorporeal act. But let me state it this way. The intellectual acts are as such incorporeal acts. Number two. The intellectual differences among men, between the wiser and unwiser people, is not due to a difference of the intellect but to a difference of the bodies. There is a passage in the Summa which I happened to note (Q 85, Art 7 body). The subject of this question is whether one man can understand better than another man one and the same thing. And the answer is yes. And how does it come that some people are more intelligent than others. "It is manifest that the more perfect, the better disposed, the body is, the better soul it acquired." He speaks here of the difference between the species. The superiority of the human body to the body of the brute corresponds to the superiority of the human soul to the soul of the brute. The reason for that being because the . . . is received in the matter according to the capacity of the matter. And therefore, since among men, even among men, some have a better disposed body, they acquire a soul which has a greater virtue or power in understanding. And therefore, as is said in De Anima, we can see

that those who have soft flesh have a better mind. And to some extent it comes from the power, the difference of the inferior virtues. To state it differently, those who are crude timber and also mentally crude, and those who bodily are delicate timber and also likely to be mentally delicate. It is better than soft.

But to come back to the Lockean argument. Locke agrees to two admitted principles--the non-corporeal character of the intellect as intellect and the fact that there are intellectual differences among men which, to some extent at least, cannot be explained except by a crucial influence of the body on the intellect. That I think is the presupposition of the argument he has stated. How would you solve this difficulty? How can the non-corporeality of the intellect qua intellect coexist with a dependence of the power of the intellect in human individuals on certain bodily differences?

(Ans: Well, its dependence on the body for the type of image which it receives. If there is something defective with sense perception, then there is no possibility that the intellect will have accurate ideas, because the ideas are always from sense perception. But once the image is obtained, and presuming that it is accurate according to these senses, then the proper acting of the reason is independent from that point on.)

That is not sufficient I believe. That would explain such states as color-blindness and other things, but the qualities, e.g. quickness of mind, could be equally possessed by a normal man and a color-blind man. And that has nothing to do with the perfection of the senses as senses. In Aristotle's opinion, which Thomas here adopts, there must be some connection between that and not perfection of the senses but with the whole bodily constitution, what here he calls the delicacy of the whole organism. At any rate, I think Locke refers here (there is no question that this is the meaning of what Locke says--that I translated it correctly) to what amounts to a real absurdity. Of course he tries to reduce the traditional view to absurdity. He says, from these admitted principles it follows that the idiot must have perfect knowledge of the natural law because the natural law is intellectually perceived. The natural law is purely intellectual and, as the difference between idiots and non-idiots is entirely dependent on corporeal, bodily, distinctions, ergo, idiots would have to have complete knowledge of the natural law. Of course no one ever suggested this.

(Ques: Must we take the terms foolish and insane, or foolish and mente capti, as meaning or only ~~as regarding~~ natural defects?)

I would say, and incidentally, in the last line he takes together "stulti et mente capti". Stulti would mean the fools, those he called in his English words the naturals, meaning natural fools. But we don't speak anymore of naturals. But in the 17th century on the other hand, it was very common to speak of naturals. The naturals and mente capti the insane. Of course they would, according to the traditional view, have no knowledge of the natural law. From Locke's point of view they would have to have it if the natural law is implanted. Well I can't say more about this difficult passage, which may contain more in it than I have been able to see. Let us turn to the fourth essay, which is in a way the most important, because here alone does Locke prove, or show rather, how the natural law is known or knowable, whereas both essays three and five show how the natural

law cannot be known. It cannot be known by imprintedness and it cannot be known by consensus, by universal consent. The only way in which it can be known is discussed in this chapter, in this essay.

Now the plan is this. First. The natural law is to be knowable by the light of nature. Number one: what is the light of nature. This is on the first two pages (to the top of page 151). Then second: how can the natural law be known by the light of nature? The light of nature proves to consist of two elements: the senses and reason. And therefore, first, what do we learn from the senses (151, second paragraph). And the rest of the essay, what do we learn from reason. This is the plan of this essay. Now let us first see how the argument runs. You see again that at the beginning of the essay Locke makes the bold assertion:

We have proved above that the natural law (or the law of nature) is knowable by the light of nature.

Such a proof has not been given; only some conditions of that knowability have been stated. Now read the next sentence.

. . . by the light of nature, which, indeed, is our only guide when we are entering the course of this life, and which, amid the various intricacies of duty, avoiding the rough roads of vice on one side and the by-ways of error on the other, leads us to that height of virtue and felicity whereto the gods invite and nature also tends.

So here the natural light is said to lead us to the peak of virtue and happiness. What does this imply? The natural light, the light belonging to man as man, is sufficient to lead man to virtue and happiness. If this is stated without any qualification, and is the last word, what would it imply?

(Ans: Not very much dependence on God.)

Well, more precisely. If that is true there is no need for revelation. But we must see whether Locke leaves it at that. And you see on the same page, the sequel, where he says: "There is nothing so obscure, so hidden, so remote from all sense." He says "removed from any meaning" (the translator); I believe it means simply sense, namely, sense perception, which the mind cannot reach. Now that would mean, if understood correctly, man's natural faculties are sufficient for the understanding of everything. That goes together with the first statement. Man is by nature self-sufficient in regard to knowledge and to happiness. Now what then is the precise character of that natural light by virtue of which man can know everything and reach happiness? Now he makes clear on the next page (page 149) that reason is not a faculty which perceives in any way. Reason is purely discursive; it works on materials given to reason. There is no other source of knowledge than sense perception. There are no principles of knowledge which are awakened by sense perception perhaps, but are not derived from sense perception. Therefore, there are also in particular no principles. All principles which men have, theoretical or practical, the principle of contradiction or the natural law, are absolutely derivative from sense perception. Is this point clear, because that is decisive for the argument which Locke makes. All our knowledge is derivative from sense perception. And here Locke does not make a distinction which he makes later on between perception by the external senses, e.g. sight, hearing, and what he calls later on reflection. For example, if you perceive the difference between will and desire by reflecting on the act of your mind, that he calls later on reflection, which he regards as equally fundamental as sense perception proper. This distinction

is not made. Every knowledge is derivative from sense perception proper. There are no innate principles in any sense. But reason works on them. This working of reason was described in today's paper in Kantian rather than Lockean terms, but perhaps that is permissible in the present context. What precisely does reason do with the sense data? Well, I suppose Locke would say generalizes. It generalizes and then it draws inferences from what it has generalized. We have certain sense impressions and we interpret them to mean the sun shines. Then we see whenever this happens other sense perceptions occur, namely, things are visible without lamps and so on. And therefore we say the sun is lighting up, it makes things visible. This is an act of reason when I say that, but that is absolutely based on the sense perception which I have of the sun and of other things.

low / Then on page 151 (middle of the page) he says twice that two conditions must be fulfilled if any land, and hence in particular the natural law, is to be known as law. In the first place we must know that there exists a legislator, i.e., some superior power to whom we are rightly subject. And the second thing we have to know is the will of that superior power as to what we ought to do. It is not sufficient to prove, in other words, the existence of God as the superior power to which we are subject. It is also necessary to prove that God's will is knowable by us, by natural reason. That is important for the following reasons. When he speaks here of the will of God, he means of course a will which man can disobey. Otherwise there would not be a natural law in the sense of the moral law. You remember the distinction which we made last time between a law which man can transgress and a law which he cannot transgress. For the kind of law which man cannot transgress knowledge of the will of God in the sense here meant is not necessary. Take the example of digestion. The laws regulating digestion can be known without knowing the will of God regarding the things to be done by us. Why? Digestion is not a thing to be done by us. That takes place by itself. So Locke has of course here in mind, when he speaks of the will of God, the will of God regarding things which are expected of man, and therefore which man does not necessarily do, which he may do. Locke states in the sequel (bottom of page 151) what we know by the senses. And we see by the sense we know only bodies and their qualities, and especially motion. And here there is no reference of course to any demonstration of the existence of God, unless you think this reference, "this visible world which has been constructed by marvelous art and order" is it. That would be the ...

(~~then~~) conditions for laws

So the distinction between sense perception and reason is not clearly drawn, although Locke claims to have drawn it clearly. Now we turn to the argument on the next page. We make an inference from what is known to us by sense perception, and the conclusion of that inference is that this visible world must have a powerful and wise artificer (the term he uses here). That is the first condition of the possibility of a natural law. Now here there is a very strange argument. He states at the beginning (top of page 153) this world could not have come into being by chance and fortuitously, and there must be such a powerful and wise artificer who has made this whole world and us men, who are by no means the lowest part in the world. And then he branches off from this point, for he speaks only of man and no longer of the visible universe as a whole, of which man is a part. And he raises the question: Could man have been made by anything but by God? And he makes here a distinction. Could he have been made by brutes? Answer, no. But could he have been made by man? That he discusses at some length. Do you remember what the argument is? Let us read it.

he (?) did not discuss.

Nor, on the other hand, can man create himself; for that we do not owe our origin to ourselves is surely undisputed, not merely for the reason that nothing is its own cause--for obviously this axiom does not prevent us, if we are willing to acknowledge God, from believing that something exists which does not depend on another.

I mention here only in passing that Locke in the same breath denies that anything can be its own cause and asserts it. But let us go on.

... but also because man does not find in himself all those perfections which he can conceive in his mind. For (omitting perfect knowledge of all things and a greater authority over things in nature) if man were the maker of himself, able to give himself being, who brought himself forth into the world of nature, he would also give himself an existence of everlasting duration. For it cannot be conceived that anything will be so unfriendly, so hostile to itself that, while able to bestow existence on itself, it would not at the same time preserve it, or would willingly let it go, when a little life's brief course had ended; for without it all other precious, useful, agreeable, and blessed things cannot be retained and are sought for in vain. Certainly it requires a lesser power to preserve something than to create it, or at any rate only the same power, and whoever at any moment has ordered something to come into being, he can effect that it does not cease to exist at some other moment.

Well, what is the burden of the argument? Why cannot man create himself?

(Ans: He suggests that he could have done better by himself.)

Sure, but more precisely. Why has man not created himself?

(Ans: He did not give himself everlasting life.)

Immortal. He did not make himself deathless to be more precise. Man is not deathless, that is the presupposition of the argument. Who created man according to Locke's teaching?--if man didn't do it himself.

(Ans: The creator.)

But what light does it throw on creation, this argument?

(Ans: It demonstrates that God is immortal.)

Yes, but that is not here stated, and I think also not implied.

(Ans: It would suggest that God's creation is imperfect.)

That is a gross understatement, but true. In other words, the creator of man or the maker of man is an enemy of man, nothing short of that. Only a being inimical to man would have created man, a being which can be aware of death, as a dying or a mortal being. You see that is one point where I believe that the demonstration is not so valid from Locke's own point of view. Because when Locke proves the existence of God, he claims to prove the existence of a powerful and wise and, I would assume, also a kind being. And here? That's the difficulty. That by the way is not the only reference to this problem. I mention only on page 127 (bottom), no, page 124 (bottom) when he says knowledge by implanted principles would be an easy and convenient way of knowing the natural law, and that this would be due to a kindness of nature. Now if Locke denies that there are implanted principles, he denies

he denies the kindness of nature, and therefore, if God is the creator of nature, the kindness of God. It is the same argument.

You see that it is an absolutely shocking statement, but it is not surprising. Why not? Let us look at Hobbes' doctrine for one moment, where all these things are very clear. What is the natural condition of man according to Hobbes?

(Ans: The war of all against all.)

ave / The natural condition, the condition in which man is prior to any doings of his own. Nature ~~is~~ has (as he puts it) disassociated man, which means nature has established enmity among men so that they are enemies of each other. Now in Hobbes, if Hobbes would have used theological language there, he would have used exactly the same expression. Therefore it is by no means surprising. There was a contemporary of Locke, with whom he was later on in contact if I remember well, whose name was Pierre Bayle. Now Bayle is famous in all textbooks for one assertion: that the Manicheans were right philosophically speaking. What does that cryptic or learned statement mean in plain English? The Manicheans were people who said there are two opposed principles--a good and an evil principle. And Bayle said if you analyze the world in its natural constitution, not in its state you find that this world is the work, at least partly, of an evil principle, of an enemy of mankind. You see, we don't recognize this. These people who speak so easily of man's conquest of nature or control of nature (these terms with which we are so familiar), but if you think them through for a moment, what do they imply? Nature has to be conquered. You conquer an enemy; you don't conquer a friend. If the theological thesis is maintained--nature being the creation of God--it means, of course, God has put man into a surrounding which is inimical to man. I know, of course, that you can deduce the idea of the conquest of nature also from the biblical command that men should rule all brutes or all beasts lower than man, but that would not be conquest. The idea of conquest implies war; it implies hostility. So a certain notion of man against everything else and man by nature exposed without any cosmic support is really underlying this modern way of thinking. And we should not be surprised to find such a statement in Locke here. Locke criticizes the notion of the beneficence of nature also in the Essay Concerning Human Understanding. That everything is due to man. Later on when we come to the Treatises of Civil Government and the chapter on property, what is the main point? Nature gives us nothing; the world lends materials; everything of any value is due to human labor. Human labor transforms the worthless into the valuable. One could even show the same principle active in Locke's doctrine of knowledge. And, given a theological expression of this thought, one will arrive at something of this kind. In all this discussion here, and I mention this only in passing although I believe it does come out in the translation, Locke never speaks of God's omniscience and omnipotence. He only speaks of powerful and wise or more powerful and more wise than we are and so on. This is also an indication of the problem, because later on in the chapters not devoted to the demonstration he speaks of creation out of nothing, which implies omnipotence. But here in the crucial context where he claims to speak in precise language, he never speaks of omnipotence, omniscience or creation out of nothing. This is also a point which I thought one should mention.

On the next page (155) he makes a reference which is not unimportant to the difference between body and soul.

And since He has Himself created the soul and constructed the body with wonderful art, and has thoroughly explored the faculties and powers of each, as well as their hidden constitution and nature, He

can fill and stir the one with sorrow or delight, the other with pain or pleasure; He also can life both together to a condition of the utmost happiness or thrust them down to a state of misery and torment.

You see, by the way, that he does not speak of an extreme misery and punishment but only of misery and punishment. This is not uninteresting considering the importance the discussion of eternal punishment had at that time. But more important is this point: God can fill or stir the soul with sorrow or joy and the body with pain or pleasure. Can we say, strictly speaking, that the body has pain or pleasure? I mean if you have a bodily pain, say a toothache, what feels the pain? Strictly speaking the soul, not the body. Pain and pleasure being mental, acts of the mind and/or of the soul. But in a looser way, of course, we call pleasures of the body or pleasures of the soul pleasures which are connected with the body and the soul, but this is not strictly speaking. Now I find later on, in the Essay Concerning Human Understanding, the fourth part, Chapter 3, a passage which created an uproar when it was published and throughout the 18th century. Locke raises here this question: Could God not have made that matter think? The problem was stated generally by Descartes and with a long prehistory—matter cannot possibly think. Thinking requires a different substance, the soul or whatever you call it. Now Locke asserts here we are so ignorant of the true nature of both soul and matter that we cannot possibly say that matter could not be made to think by God. And in this connection he says:

What certainty of knowledge can anyone have that some perception such as, for example, pleasure and pain should not be in some bodies themselves after a certain manner modified and moved in other words, not in a stone/ as well as that there should be in an immaterial substance upon the motion of part of the body.

In other words the ascription of pleasure and pain to the body is in the Essay Concerning Human Understanding linked up with the materialistic interpretation of everything. And I regard it at least as possible that this is foreshadowed in our remark here.

Let us take another point on the same page.

Hence it appears clearly that, with sense-perception showing the way, reason can lead us to the knowledge of a law-maker or of some superior power to which we are necessarily subject. And this was the first thing needed for the knowledge of any law. Certainly I grant that some have undertaken to prove from the testimony of conscience that there is a Deity presiding over this world; others have done so from the idea of God, regarded as innate in us, either of which ways of argument would certainly prove that God exists, even if (and this will perhaps become clear to anyone considering the case more carefully) the argument of neither method derives its whole force from our inborn faculties, i.e. from sense-perception and reason, . . .

Now what does Locke say here? He refers here to two other arguments which he did not use: the argument from the conscience and the argument from the innate idea of God. What does he say about this, about this argument?

(Ans:)

In what sentence? Let us be precise. Where does he say that they are valid?

(Ans:)

That would seem to be an admission of their validity. But if you look at the note of the editor (Note 2, page 154) he says si, which is the Latin word for if, appears redundant. In other words, Locke's admission that these arguments are good is based on the omission of the word if. Now, if they prove, which of course makes that amount to a . . . inaudible . . . I admit that if one reads that si as if, the sentence becomes practically unintelligible. I admit that. But still we cannot say, as the editor says, very beautifully and paying a great homage to logic, 'Locke allows the cogency of two of the other arguments, but he remarks that their authority is not based on reason and sensation alone and in fact presupposes this a priori notion which it is difficult to accept'. Now please. Can arguments be cogent if they presuppose notions which it is difficult to accept? The editor simply reproduces Locke's absurdities, which is less than an editor or an interpreter should do. But it is a typically Lockean procedure. Later on he does this: he discusses a certain argument about the existence of God in the Essay Concerning Human Understanding and indicates vaguely that he does not regard this as a good argument. And then he was attacked because of this vagueness, and he said: well, he did not want to hurt people who believed in God on the basis of this argument. In other words, he regarded himself as a kind of super-educator. He lets people believe in God on the basis of a wrong argument, and the same he does here. But he makes it perfectly clear in the sequel, by the way, that the arguments are of no validity. But that only in passing as regards the method of Locke's writing.

Now let me see. Well, Locke, at any rate, claims to have established the existence of God. And then the question arises, how can we know the will of God? Answer - the will, of course, appears from his work. Now if we read that on page 157.

What is it . . . end in view for all things.

Why does he say 'end in view'? Because it is only the end. Could this be due to the influence of Dewey, or someone like him at any rate? At any rate, the end of all things.

For since . . . because man is . . .

Here in the sequel Locke reproduces with characteristic changes this Thomistic view. Man has a natural constitution, and this natural constitution points to man's duty. Now let us see what he says about that.

For since man . . . worthy of so great and so beneficent a creator.

I note one thing - that there are two reasonings. First, from the end of all things and second, from the constitution of man. From the end of all things and the first argument taken from man's natural constitution point to religion as a duty of natural law, if we understand by religion the knowledge and the praise of God, the worship of God. That is perfectly clear, the great and strong emphasis on this point. Now go on.

Further . . . to this point than is necessary.

Let us stop here for a moment. You will notice that Locke never uses here

the expression natural inclination. When he speaks of man's social character, he speaks of a propensity of nature. He avoids the term natural inclination. He speaks of an inner instinct only in the case of self-preservation. Now let us read the last sentence.

There will be . . . to the end of sentence.

Well, which are the duties . . . toward God that is clear, knowledge and worship. And toward the neighbor. What is the root of the duty toward one's self?

(One of the roots is this self-preservation.)

The only root. Because the root of the duty toward God is the first, the inclination (if we use this term which he does not use) toward knowledge and honor of God. The root of duties toward our neighbors is our social propensity. The root of duty toward ourselves is the desire for self-preservation. Well, that sounds strange to men, because what are the duties toward ourselves? I mean, within which limits do they remain or how far do they extend? Father Buckley, I must always call on you because you must know these things best. I do not remember a reference in the Summa to duties toward ourselves. But that is probably my ignorance of that.

(. . . inaudible . . . There is a constant stress on acting according to reason, in the sense of a development of the reason. Each one has the duty to develop his reason.)

Well, I looked up some more recent writers, later than Locke, and they take for granted that everything he called self-respect and concern with man's dignity in one's self is part of the duty toward one's self. In other words, not mere deference. Locke has, it seems, a very narrow view of the duties toward one's self. Mr. ___?

(The editor has a footnote here referring man's preservation of himself to the Summa Theologica.)

Yes, sure, there is a well known passage which you know of course, but there is not a word about duties toward one's self. These three . . . inaudible . . . In other words, there is the sub-human element which man shares with all living beings, self-preservation. Then there is something which has to do with his nature as a social nature, and then with his rational nature. That is underlying the Thomistic tri-partition. That tri-partition has nothing to do with these three kinds of duties. I really don't know where it stems from. It is not in Cicero for example. Where this distinction of the three kinds of duties stems from I really don't know. At any rate, Locke seems to have a very narrow notion of the duty toward one's self, namely, derivative from self-preservation strictly understood. And I note that only self-preservation is here called an internal instinct. In the case of the social direction, he speaks of some propensity of nature, which can mean almost anything, which can mean a propensity derivative from man's sense of weakness if he is not allied with other . . . inaudible . . . It does not necessarily mean more.

Now let us turn to the next and last essay we have to discuss today. The plan is also clear on the whole. The subject is 'Can the Natural Law

be known from the Consensus of Man? First, a general statement showing the inadequacy of the voice of the people or general consent (the first paragraph). Then Locke discusses what he calls positive consensus, meaning a consensus based on pacts. And then he discusses natural consensus. The natural consensus is subdivided: natural consensus of actions (page 164-167) and natural consensus of opinion, and that is the largest part (167-179). And this is subdivided into two parts: (a) there is no consensus of opinions and (b) even if there were consensus of opinions regarding right and wrong, it would prove natural law. And the last section deals with the denial of natural consensus regarding principles. That is a very brief last paragraph.

Now the first point which we note is this. At the beginning, can you read that sentence?

For is there anything so abominable . . . the overthrow of kingdoms.

Let us leave it at that. There is something wrong in the translation. 'The plunder of temples of God'. 'divine temples' is ambiguous. Let us consider that. What does it mean here? What follows from the plunder of temples of gods? What does this bespeak, as stated here? The plundering of the temples of the gods is a crime against law, against right and, in the context, even against natural law. There is another passage to the same effect somewhat later. But in order to understand that, let us turn to a somewhat later remark on page 167, lines 4 from 7 to bottom.

All this . . . divine revelation.

That's all. Now what does this mean? If it becomes known rather by revelation than by the light of reason, what follows from that?

(I don't know whether this is what you are getting at, but God becomes known by reason.)

However, there is a difficulty. If natural law as previously described contains primarily, chiefly, most importantly, duties toward God, how can this be said - that religion becomes less known by the light of nature than by divine revelation? It is only another way of putting it: how can acts against the temples of gods be used as an example of criminality proper - if polytheism is fundamentally wicked and a crime against the natural law? There is another passage later on to this effect (page 191, middle) where he speaks of the complete absence of agreement regarding natural law.

By others there is no . . . Here there are no temples of gods or their altars spattered with human blood. The absence of temples of gods is here taken as much a sign of action against the natural law as in chastity, theft and other crimes.

That is a very great point, because if the natural law as described up to now, including essay 5, includes as its most important and primary part duties toward God, i.e., toward the one God, what is the status of polytheism? Polytheism is a most terrible crime? As terrible as atheism. And here, with what right can then Locke take these examples of crimes committed against idolatrous practices? Can he use them as examples comparable to theft, murder, and so on? Do you see the difficulty? We can perhaps develop this later &

bit more fully.

Now let us turn to the big issue. All consent stems either from a pact of is natural. The pact may be tacit, namely, insofar as men's need and advantage advises a certain course of action, such as the free intercourse of ambassadors, free trade and other things of this kind, or by an express pact. Now Locke discusses first the tacit pact. The express pact is not interesting. As to the tacit pact, he tries to show that whatever is based on a tacit pact cannot be a prescription of natural law in itself. For otherwise it would not need a pact. And he discusses one example. And that example is which? The reception of ambassadors. In other words, that ambassadors are accepted peacefully and not treated as enemies, killed, and so on. Who made that a natural law? Well, that is one of the natural laws in Hobbes. The fundamental natural law being to seek peace, anything typically conducive to peace, such as the exchange of ambassadors, would of course be a prescription of natural law. Now Locke denies that this is a natural law as you have heard. But the most important point, perhaps, in this connection, is a remark which occurs here.

The natural law does not suppose that men are divided into hostile states; the natural law does not permit that even. (This is Strauss' translation of second half of sentence of page 163 beginning 'thus althoughtan envoy . . .')

The natural law does . . . states

You quoted that. Now what is the consequence of that? The natural law does not permit that men are divided into hostile states. What is the traditional teaching about that? Well, what about war? If the natural law does not permit such a division, the natural law does not permit war. What was the traditional view about that?

(That there are just wars.)

Ergo about war, natural law permits war. What is the consequence of Locke's assertion, which, of course, is not supported by any reasoning of Locke's. But let us see, in order to understand the possible reasoning, what is the consequence of that? If the natural law does not permit hostile states, states hostile to each other, what follows from that?

(Natural law would seem to dictate arrangements which would . . . inaudible . . . war . . .)

But there is no suggestion of this nature anywhere here or later in the Treatise of Government. What would follow?

(It wouldn't be natural to defend yourself.)

No, I would state it this way - the absolute inapplicability of the natural law to the life and activity of states, because the possibility of . . . inaudible. . . And it has some other implications which we may perhaps see later.

Now let me see We don't have to read all of it, but the end is only very important. This agreement to treat ambassadors in a friendly spirit, or to receive them in a friendly spirit, what does he say about that?

This whole consent based on pact does not prove the law of nature but is rather to be called jus gentium, law of nations; and that is not something commanded by the law of nature but persuaded by common utility. (This is Strauss' translation of sentence on bottom of page 163 beginning 'Therefore, all this general consent . . .')

And this point was properly raised and stressed on today's report. The alternative natural law doctrine which appears from the pages of Locke would be one which is derivative from the common utility of men as a wise suggestion, as distinguished from strictly speaking obligatory law. We will come to that when we come to the last essay. Locke tries to show first that the actions or actual manners of men show no consent whatsoever. And here it is especially important what he says on page 167 (top) where he denies that men who act against the natural law feel any pangs of the conscience. These people act against the natural law without, and not only criminal individuals but whole nations, without any feeling that they do wrong or without any pangs of conscience. But then he goes on to say: granted that men act contrary to the natural law, that does not necessarily prove that there is no natural law or that there is no consensus. There could very well be consensus regarding right and wrong although many men and nations act against right and wrong. Obviously. The fact that a man steals - he does not deny that theft is forbidden, and the same would apply to the natural law as well. And therefore Locke tries to show that the opinions of man regarding right and wrong are in total disagreement in every point. We don't have to read all these examples. Rather we cannot read them. The most interesting one is the last (page 173) where Locke takes up the question of self-preservation, and says even this fundamental law which some people declare to be the primary and fundamental law of nature, and where there is a natural instinct driving men to that; even that is disregarded. And the greatest proof he gives that not only males but even females disregard that, the great example being the widows in India, who ascend gladly the funeral pyre completely disregarding their self-preservation, so strong is the power of opinion even against natural inclination. How Locke can reconcile this fact of the Indian widows with the position he assigns to self-preservation later on in the Essays, we may take up when we come to that. May I mention this now? A very fundamental point in the Treatise of Civil Government is this instinct or desire for self-preservation as the basis. What will he do later on with that Indian widow? There are other examples of course. There are even other kinds of suicide, sometimes heroic people who don't fear death, and so on. But how would he reconcile that? Let us discuss that next time when we come to a discussion of the last essay about private utility as an inadequate foundation of natural law.

But the most interesting point which we find here is in the next paragraph. Will you read that?

It would be tedious . . . they are not moral propositions/practical propositions/ nevertheless . . . without punishment.

In other words, Locke enlarges now the whole issue. The existence of God does not suffice, and God having indicated his will by his creation. It is also necessary to make the immortality of the soul a principle, because there is no law without punishment for the transgressor. Why does he speak of the immortality of the soul, even if we grant the principle no law without punishment?

What does he imply?

(Inaudible response.)

Locke would say the greatest robbers in the world escape. In other words, if someone makes himself a tyrant, he controls the courts. . .

TAPE BREAK

...but to see how shocking this thing is, turn to p 179, the last para-- and don't forget what we just read.

(paragraph read)

What do you say to that? Speculative principles do not affect moral affairs in any way whatever. What did he say there?

(inaudible response)

He doesn't go so far as to call them explicitly speculative principles, but there are speculative principles because he says that there are principles and they are not practical propositions; hence they must be speculative principles. Moral law does not need--the natural law does not need theoretical principles of any kind and it needs theoretical principles of any kind. Make your choice. But you can't have both. And that is a very grave thing and throws a sinister light on every thing he did in this part of the book. Or can you--or is there a way out to save Locke from the charge of gross self-contradiction, if intentional self-contradiction?

((Inaudible dialogue. Gist: (By changing the issue from one of the existence of the natural law to the belief that it exists and is well known.) But what kind of principles would they be? Would they be principles if they are derivative? (It is the assumption of a self-evident proposition. In para 149, Locke says, "In fact, at all times every argumentation...given and perceived. He assumed he was going to be granted these things.)))

Surely. But Locke says much more than that. He says that all these granted things... are eventually traced to what? Sense perception. So "self-evidence," if we use that word, can only be sense perception; everything else is derivative. Later on he changed his doctrine about that, in the 4th part of the Essay Concerning Human Understanding--I can't go into that now--but here there is not a trace of that. He says the existence of God must be demonstrated, and he gives a sketch of such a demonstration. In a way the existence of God is the principle; namely, after having been established, it is the starting point. This then is the principle of natural law. And of course as such it would be a speculative proposition, a theoretical proposition, as Locke says here. Because he says, "no practical proposition," and that means a theoretical proposition or speculative proposition. So natural law depends on speculative propositions; but what does he say later? Speculative principles do not affect moral things at all. Now if you want to you could say, the speculative proposition, like the existence of God, is not a speculative principle. But could you get away with that? What is the highest speculative principle, according to Locke here? The principle of contradiction. It is impossible to establish any proof, including the proof of the existence of God, without making use of the principle of contradiction. Therefore if there is to be a complete independence

of moral things in regard to speculative principles, it means of course there is also complete independence of moral things regarding the speculative propositions. I think the contradiction is really there, and is of crucial importance.

A few more points. On the next page--175--he speaks of polytheism a gain, and he says very emphatically that the polytheists are atheist, and that means that a considerable part of mankind contradicts the first and most important law of nature. I will mention only this point here. First he speaks of these savages. And then he says if you approach, or if you appeal to the more polished nations, or philosophers of a saner mind, you won't derive any advantage from that since to the Jews all other nations are heathens and not sanctified, and to the Greeks all other nations are barbarians. What does this mean in this context? What does the Jewish position toward the gentile and the Greek position toward the barbarian mean here in this context? These examples show, as appears from the context, how little observation of natural law there exists. The sequel is, that great nation of Sparta approved of theft. In other words, the Jewish position toward the gentile and the Greek position toward the barbarian are against the natural law. But the Jewish position ~~it~~ was largely based on the fact that the gentiles were polytheists or idolators. Here you understand the meaning of this remark that the natural law does not allow any division of mankind into hostile societies; that affects also religious dissension. And the only way out of that would be to allow that polytheism and idolatry are not necessarily against the ~~it~~ natural law, a point which I have made before.

The last point: there is also a brief reference to Christianity, with a view to the ~~principle~~ principle that they need not keep faith with heretics, which is also, from Locke's point of view, a crime against natural law.

I would in conclusion only mention one passage where the translator found difficulty, and where the thought is intelligible and very important for the understanding of the whole argument. In the last para here or the para before, Locke makes this point: Granting that there is universal consent, say regarding theft, that would not yet prove that theft is a crime against natural law--that's the point he makes here. Now granting what cannot be granted--because it is not true, but if one is willing to grant it, consent can never lead us to a knowledge of the natural law. And he gives here the example of something where there is universal agreement without proving it is natural law, namely that gold is everywhere esteemed more highly than plumbum--lead. Universal agreement does not prove that natural law sanctions the dignity of gold. People esteem gold more highly than lead on the basis of certain prudential reasoning, and that reasoning is everywhere that gold is known the same, but that does not mean it is a natural law. That passage may be of some importance in understanding the kind of natural law which Locke suggests; that there are certain prudential reasonings, like preferring gold to lead, which lead also to preferring, say, peace and order to anarchy and war as a rational preference, and that is all there is to it.

But I come now to the aequal here where he makes the argument more precise. ~~Now~~ What does he say? "Such a universal consent could indicate a law of nature; it could not prove it. Such universal consent could affect that I believe with greater vehemence; it could not affect that I know with greater certainty that the opinions in regard to which all men agree is the law of

nature." And now we come to the passage which the editor didn't understand. "For I cannot know with certainty whether this universally held opinion is the view of everyone in private, for it," namely, my thought about other men's opinions, "is faith, not knowledge." What does he mean by that? In other words, I find universal agreement about the execrable character of murder. Locke says, I can't have such knowledge. Why can't I know the fact of universal consent?

(People do not always say what they think; for instance, the mistakes seen in public opinion polls.)

That is exactly it. What Locke means has been said more simply and clearly by Descartes in the Discourse on Method, the Third Discourse, in which he says this: He would like--~~Descartes~~--to make it a rule of prudence to live in accordance with the opinions of the people among whom he happened to live. He wanted to be left alone, and so he wanted to be nice. But then he says, in order to find out what these opinions are, I took my bearings by their actions, not by what they say; because in the corruption of our age--as he put it--people frequently do not say what they believe. And sometimes even if they are honest they do not say what they believe because they themselves do not

(Continued on page 19.)

know what they believe. That is true also of public opinion polls, isn't it? At any rate, Locke says, in this edition which this same man edited, on p. 261 in a discussion on idolatry: "If idolatry were nothing but terminating our worship, i.e., thoughts, on something that is not God," —in other words, if idolatry would not consist in certain overt acts, like genuflections before images, and this kind of thing; if idolatry were not something but a thought on something which was not God,— "I do not see how there could be a law to punish idolaters, seeing their thoughts cannot be known." In other words, even if they say they are idolaters that does not yet prove that they are idolaters; ~~that~~ cannot be known. That is, I suppose, an overstatement; Locke is somewhat too pessimistic regarding public opinion polls. But for the interpretation of this passage the later one is sufficient. Universal consent cannot be established—universal consent regarding opinion cannot be established, because of the fact that we can never know what another man thinks; "that is faith," he says, "not knowledge." The last verse we have already discussed.

Summary

Now if we try to summarize this point. Locke's natural law teaching depends absolutely—Locke's natural law teaching as he meant it depends absolutely on what he thought about the ~~proper~~ demonstration of the existence of God, and the connection between the demonstration of the existence of God and the natural law proper. More simply, Locke's natural law teaching, as he meant it, depends absolutely on the fact that the immortality of the soul is established by man by reason, not on the basis of Biblical texts, but by reason; and no such demonstration is given here in any form. Later on he even says explicitly it cannot be given; therefore the natural law, as Locke pretended to see it, is in his own opinion baseless. And if he wants to have some guidance for man and not to believe in this so-called relativism he must have had a new basis for natural law or for human morality or however you call it. And so, then, we must see whether we can discern anything about it from the last three essays.

natural law is
baseless

I suppose we are already beyond our time, but if there are one or two little points on which you...Or am I mistaken. No, I think I am correct: you have quite a few little points, emphatically.

A: [Inaudible... Where did he get the story about Socrates?]

S: That is probably in Diogenes' Laertius, or Aurelius Gellius; I don't know. I have heard something of this described. In regard to Cato, I remember it more distinctly. But there was an enormous amount of gossip in antiquity, and part of it has come down to today from writers like Aurelius Gellius... the editor [Inaudible... It would have been the duty of an interpreter, sure. That is his business.] It was relatively easy to find out because all the nasty things said against Socrates were repeated by certain Lutheran theologians of the 18th century in order to show that all virtues of the pagans could only have been splendid vices... it would have been extremely dubious to prove that, but surely one should substantiate that. But still that is not terribly important—that was not the main picture.

May I address a question to the class? The most important question which appeared last time was the question of the proper promulgation of the natural law. Have we learned anything new on this subject beyond what we

know what they believe. That is true also of public opinion polls, isn't it? At any rate, Locke says, in this edition which this same man edited, on p. 261 in a discussion on idolatry: "If idolatry were nothing but terminating our worship, i.e., thoughts, on something that is not God," —in other words, if idolatry would not consist in certain overt acts, like genuflections before images, and this kind of thing; if idolatry were not something but a thought on something which was not God,— "I do not see how there could be a law to punish idolaters, seeing their thoughts cannot be known." In other words, even if they say they are idolaters that does not yet prove that they are idolaters; ~~that~~ cannot be known. That is, I suppose, an overstatement; Locke is somewhat too pessimistic regarding public opinion polls. But for the interpretation of this passage the later one is sufficient. Universal consent cannot be established—universal consent regarding opinion cannot be established, because of the fact that we can never know what another man thinks; "that is faith," he says, "not knowledge." The last verse we have already discussed.

Now if we try to summarize this point. Locke's natural law teaching depends absolutely—Locke's natural law teaching as he meant it depends absolutely on what he thought about the ~~existence~~ demonstration of the existence of God, and the connection between the demonstration of the existence of God and the natural law proper. More simply, Locke's natural law teaching, as he meant it, depends absolutely on the fact that the immortality of the soul is established by man by reason, not on the basis of Biblical texts, but by reason; and no such demonstration is given here in any form. Later on he even says explicitly it cannot be given; therefore the natural law, as Locke pretended to see it, is in his own opinion baseless. And if he wants to have some guidance for man and not to believe in this so-called relativism he must have had a new basis for natural law or for human morality or however you call it. And so, then, we must see whether we can discern anything about it from the last three essays.

I suppose we are already beyond our time, but if there are one or two little points on which you...Or am I mistaken. No, I think I am correct: you have quite a few little points, emphatically.

A: [Inaudible... Where did he get the story about Socrates?]

S: That is probably in Diogenes' Laertius, or Aurelius Gellius; I don't know. I have heard something of this described. In regard to Cato, I remember it more distinctly. But there was an enormous amount of gossip in antiquity, regarding and part of it has come down to today from writers like Aurelius Gellius... the editor [Inaudible... It would have been the duty of an ~~interpreter~~, sure. That is his business.] It was relatively easy to find out because all the nasty things said against Socrates were repeated by certain Lutheran theologians of the 18th century in order to show that all virtues of the pagans could only have been splendid vices... it would have been extremely dubious to prove that, but surely one should substantiate that. But still that is not terribly important—that was not the main picture.

May I address a question to the class? The most important question which appeared last time was the question of the proper promulgation of the natural law. Have we learned anything new on this subject beyond what we

have seen last time? Is the natural law duly promulgated?

A: He seems to be calling into question tentatively the possibility of promulgation. That if this can only be known after the proof of the existence of God and the immortality of the soul, then he questions whether this is possible at all on his kind of knowledge--the kind of knowledge that he sets forward. To make the point even more strongly I would say that it is not only not promulgated, but that it cannot be.

S: In other words, the difficulty which I stated regarding the immortality of the soul if stated clearly decides in itself also against the possibility of promulgation. Yes, very good.

A: If a universal opinion held by everyone cannot prove there is natural law, even where every one reasons, and if he means sense perception....I mean if that is Locke's way of finding out what natural law is, then that would seem completely to rule out...the chance of finding out anything about natural law. Even if you base it upon utility, you must look at certain things which are held in common, and so forth.

S: In other words, what you say is this: this skepticism regarding our knowing the opinions of others could be destructive of anything which Locke might try to do. Yes, I think so, this could be stated; but Locke, I would assume, exaggerates here deliberately. The example regarding idolatry shows he is concerned with toleration. In other words, no interference whatever with what people think; and therefore he states this crude principle that what people think cannot be known, and therefore it cannot be subject of legislation. So he exaggerates, surely. But even beyond that one could say when Locke says the majority of men act on no other principles than that of immediate advantage, how does he arrive at that proposition: That the large majority of men choose what is immediately advantageous to them and have no other principles? One could perhaps say, not in judging Locke, but in defending his policy, that this proposition is based precisely not on what people say, but on what he has observed through the years. But the question then would be a different one: how are such data going beyond any experience of any individual possible? That raises the whole question of induction, and that is another matter. So I think Locke would say that anything that he says about man's natural inclinations, namely inclination only toward immediate advantage or pleasure and pain, is based on observation of what men do and in no way of what they say, because he says that they say just the opposite: they say all the time that they are guided by noble principles, and they act as if these principles affected them very little, if at all.

It is owing to this character of the Essays on the Law of Nature that it is necessary to stick to the text and even to interpret individual sentences at some length, and so we may lose sight of the broader problem....I think everyone of you should really have read the few pages in Hooker, in the first book of the Laws of Ecclesiastic Polity where Hooker restates the traditional doctrine of natural law. Otherwise you do not see what Locke is attacking, and the target of his treatise does not appear. For, contrary to the appearance

created by Locke in his Treatise on Civil Government, it is much less that poor fish Filmer who is the target of the treatises than the powerful and grand position of the traditional natural law doctrine. That was a convenient way of creating a kind of—what do you call that, bogus—?

A: Front?

S: Well, it is a bit more than 'front' because Filmer was a highly respected writer among the extreme Royalists of England at that time. But Locke tries to kill two birds with one stone by making Hooker the target.

END OF LECTURE

...at many points very subtle, and in a way even too subtle because I did not have an overall picture of what Locke is doing in the section except of course that he is dealing there with the problem of obligation, which is clear from the very title. But you in your analysis of Locke, what specifically is the issue here?

last three essays

(It seemed to me that the issue was the problem of whether the law of nature is binding on men because it is directly God's will that they should obey a particular law or whether the law of nature is binding on men because inherent in their very nature, in their being, is reason which (inaudible))

Yes I do believe the difficulty of this section is in Locke's hesitation between these two different interpretations: the obligatory character of the natural law rests on the fact that it's the will of God, or the obligatory character of the natural law rests on its being rational itself. But could not one reply to this that Locke has answered this question right in the first essay when he speaks of the cooperation of these two elements? In other words, natural law must be rational in its content; otherwise man cannot recognize it by his natural reason; but to the extent that his reason tells him this is the right thing, you cannot speak of a law properly speaking because no man can be his own commander. Therefore in order to speak of a law, the suggestions of reason must be grounded in the will of a superior, of God. That was the way in which he presented it in the first essay.

in order to make it a law?

(This creates, or states a difficulty regarding the punishment side of law)

(Inaudible sentence) My reason tells me that theft is bad, unreasonable, bad. All right. But this is a prudential consideration to theft; it becomes more than that if it's a crime, and it can only be a crime if a superior legislator is there, and if a superior legislator is there then there is the possibility of punishment at the same time. Why does the question of punishment affect the fundamental situation in your opinion?

this regarding

(If the side of the law of nature as dictate of reason is stressed and the aspect of God's will is not stressed, then the question comes this natural advice cannot be law because there is no authority to punish violations)

prudential

But the question is whether this is not an unrealistic premise. In other words, there may be passages in which Locke speaks more of the will of God and less of the intrinsic rationality; there are other passages where just the opposite happens. But since he has explained in one passage how the two elements—God's will and intrinsic rationality—work together, he is not under an obligation to repeat this point all the time. I mean, the mere fact that Locke omits something which he has mentioned before does not in itself create a difficulty. Why do you see the difficulty lying in punishment?

(Well, it just struck me as significant that out of this problem Locke comes to the idea of human law and human authority of a very different kind.)

Yes, but you must never forget the distinction between divine punishment and human punishment. You could draw up such a scheme, though of course too simple: crime against God's law, the natural law, divine punishment; crime

against the human law—human punishment. Of course that overlaps; if you think of murder, which would be punished in both cases/ We come to a different question then, not only the question of punishment but the question of the relation between natural and human law. Where is the difficulty here?

(Locke has set up an apparatus for the enforcement of the natural law)

Show me the passage where Locke says that human law is required to supply sanctions for the natural law. There may be one; I haven't seen it. In the Treatises he does that, but we are not reading now the Treatises.

(I don't think he says that you're required to have a human...)

Yes, that's another matter. The natural law (assumes ?) and even requires that there ~~must also~~ also be human law, and this human law is ultimately sanctioned by natural law, but neither its contents nor its punishment are simply supplied by the natural law.

(What I was going to say is that the relationship between the natural law and the authority to punish natural law, is just that...)

Oh, you can't punish a law.

(...the authority to punish violations of the natural law is a relationship where one executes the will of the superior in everything.)

But aren't there crimes against the natural law of which the human legislator or the human law doesn't take any cognizance? I mean there is a strict formulation of the argument in this book between natural law and what we might call natural punishments, meaning punishments inflicted by God—(inaudible, reference to life after death) I altogether would say Locke does not speak here of (deduction?) of the necessity of human government; he only shows where it would come in—that the authority of human government would be derivative from God's law, that he does say.

government

(The point I was trying to make is that, not only does he say it would be derivative from God's will but that it would partake of this same character of absolute authority.)

Now we come to something else. (Inaudible sentences) All right, let us look at that, p 196. Because I really would like to find the nerve of your argument.

"The obligation of the natural law is everywhere the same, only the condition of life varies; and identically the same is the duty of the subject among the Garamantes and ~~of~~ Indians as it is for the Athenians and Romans."

Meaning, people subject to despotic government and people subject to republican government. Here indeed he speaks of the natural law obligation. So we come back to this simple point. Our obligation to obey the human government is not itself a human obligation, for positive law cannot be obligatory on grounds of the positive law, because you can always raise the question why should I obey this law as a whole which is merely imposed on

me by God knows what people. I may be punished for that, but every pirate punishes me too if I don't obey him, and that is of course no moral obligation. And therefore true obligation to obey the positive law must have a higher source, the natural law. And here Locke says an old thing; and here Locke says the duty of the subject is the same regardless of the kind of government. What is the meaning of that? I mean I don't see anything very characteristic of Locke in this point. What is the duty of the subject in one word? Is it ~~not~~ the duty of the subject, or of the citizen for that matter, to obey the positive law? Regardless of whether that is a despotism or a very free country. The content of the law will differ.

(I also think, ^{of the duty of the citizen in the pure democracy theory,} ~~(inaudible) ... a better democracy~~ he also has a duty to vote for example, which he doesn't have in the other)

That's another matter; once the law is made, once he has voted, regardless of whether he likes it or not he has to obey it. And he has to obey it as much as if there were a law handed down from a despot without asking him; that's what he means. Now there was a man who emphasized this point with particular force; you know that? Who made this point, liberty in the sense in which it is ordinarily understood doesn't make any sense; nowhere are you free to disobey the law. Who made this point? Sure, Hobbes. I mean; I don't say that Hobbes alone said that... (inaudible)

But let me come to... You made one point with great subtlety and I am sure that there you have a point though I have not been able to follow your argument. And that refers to the usage of Locke in the 6th ~~of~~ essay. You will recall in the first essay Locke has adopted the Hobbesian distinction between law and right... well, why should I not give you the Latin forms and you can keep them in mind for ten minutes. Lex is law; and jus is right; that at least is the translation of the two words into French and German and I think you recognize them in English. Lex is morally neutral as it sounds, law. Jus has something to do with the Latin word justum, just, so the element of right, righteousness, which we hear when we hear the English word right belongs also to jus. Now these terms were used without great distinction throughout the (tradition ~~of~~). The terms were used interchangeably. Hobbes complained about that--bad usage, confusing usage; there must be a clear distinction. Lex means the body of law; the obligations imposed on man, man's duties. Jus means the right, that which I may do. There are many things which a man may do but must not do. Now Locke adopts that, and then if Mr. ** observation is correct, he does not use the term jus anymore in the 6th ~~book~~== I believe you are right. sequence!

(Just one time, page 161)

Yes, but where jus has the meaning here really of right in the sense of justice. OK, but in the main you are right. And now what conclusion did you draw from the fact that at the beginning of chapter 6 there is such identity of the word jus where just certainly does not mean a right which I have but means a body of law. What conclusion did you draw from ~~that~~? That I didn't understand.

(He first uses the word jus in the sense of body of law and then later he begins to use it in the sense in which he's defined it.)

I see, in the beginning he is speaking of God's right, right? And ... (inaudible word) how God's right broadens down, you might say, to human government. Yes, there may be something to that. But for the first (~~time~~). I would suggest this very simple explanation, on page 180 or 181. Here he introduces the term not as his own term but as the term of the jurists; therefore he has no responsibility for that. That is not his own (~~idea~~); he uses the doctrines handed down by other people who of course did not have Hobbes' (~~doctrine~~). And then he builds on that a whole doctrine of what duty means, of what obedience means; and in this context he speaks indeed then of the right, jus, of the right of God from which the right of all governments are derivative. But you see on the other hand ~~something~~ from the usage on p 184-85 when he speaks of the right of donation and later on of the right of pacts that jus here takes on a somewhat different meaning and does not longer have the right of what the (continental ~~jurists~~) call subjective right. And I don't believe that this leads further. What conclusions follow from the fact that Locke emphasizes here so strongly that all obligation presupposes the will of a superior, ultimately the will of God? What follows? What new things do we learn from this mere fact? That I fail to see.

(Well the argument I was making was that ^{because} he presupposes not simply the will of the superior but the fact that he exists, the will of a superior authority which is promulgated per se is evidence that this will not be obeyed.)

All right, but that would not be a natural ^{law} right. If it would that would be in the case of God's divine (~~law~~). A natural law must be a ^{reason} law, the content of which is evident to human beings. So we come back to the old definition given in Essay I, that the natural law has these two prerequisites: the will of God and the rationality of its content. If you had only the will of God and no rational content you have a divine positive law. Or if we have rationality of content but not the will of God, then it is merely an advice or counsel which we give ourselves. So I see no difficulty here either. The difficulties lie elsewhere.

But I would like to mention a few passages to which you referred. On p 196 you could not help repeating a blunder which the editor made, on the bottom of the page 197: "If these things are laid down we say that the obligation of the natural law obtains through ~~all~~ all ages and throughout the whole universe unimpaired and unrestricted, for if it does not oblige all men thereason is either because (he says) it is not delightful" which is the Latin laeta ~~was~~, which doesn't make any sense, as if the delightfulness of the law can be the ground of obligation; one has to read, laeta, and then it means because it has been given to a part of the human race — or because it has not been given to the human race. So that text must be changed.

Then another minor point on page 214, where I believe I cannot agree with you where you said something about utilitarianism which I didn't think applied here. Page 213, I'm sorry. Now, in criticizing these people who derive natural law from the (~~instinct~~) of each he says, 10 lines from bottom on page 213. I make a few changes in translation as I go:

"But ^{not} 'In truth' "One may make here a distinct observation that the appearance of this view (~~instinct~~) seeks the moral principles and the rule of life rather from the appetites and the natural inclination, ^{not} 'instinct' "of man than from legal obligation, as if that were morally best that which most men desire."

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That is the sentence on which you base your conclusion. I ask you, with what right can you say that utilitarianism leads to majoritarianism?
~~that proves that~~

(I should have said how it would be utilized)
~~that predicted~~

I see, but first one has to get at what Locke means. Locke means this. If we want to establish what the moral principles of the rule of ~~life~~ life, we have to start from the legal obligation, of course from the natural law, and not from man's appetites or natural inclinations. Number 1. These people who attack start from men's appetites and men's natural inclinations, and they imply that that is morally best what most desire. What does he mean? Most people are not concerned with duty and virtue but only with ~~self~~ self interest? and from this fact they draw the erroneous consequence that self interest, as distinguished from virtue or duty is the basis of morality. I mean you say still be right regarding your assertion about utilitarianism, though it would need some proof. But ~~impossible~~ there is no indication of that here.

— Summary —

Tradition →

Now these were some particular points which your paper brought up, and I would not like to turn... (inaudible) And I would like to remind you of some points we made in the first two discussions regarding the first five essays. Now Locke presents throughout the book, including the last three essays, at first glance a traditional natural law teaching. Now this traditional natural law teaching, as it appeared from Locke or through Locke, has the following three characteristics: In the first place its basis is man's natural constitution or natural inclination; man is by nature ordered, has a natural inclination toward an end; his end has an inner articulation, it consists of a variety of ends of which there is a hierarchy. This end is the happiness of man; the core of this happiness is virtuous activity. In other words, the good human life consists in obedience to the natural law, the natural law prescribing those actions which man has to do in order to reach his natural end. The second point is a presupposition of this view, and that is divine providence and immortality of the soul. In other words without God's taking care of man—and this taking care can also ~~be~~ be punishment, and such punishment not being available in this life sufficiently there must be punishment after life, therefore immortality of the soul. And the third point, the natural law is sufficiently promulgated, because if it were not sufficiently promulgated, i.e. sufficiently known, man could not obey it. Now Locke made the following suggestions. In the first place he denies that man's duties can in any way be known from his natural inclinations; in an unwritten essay he stated this explicitly as we have seen, and even in the passage which we just read it appeared again; man's natural inclinations do not lead to virtue but to the subversion of all ~~(inevitably)~~. Second point, there is no proof of the immortality of the soul—Locke does not say so but he demands the immortality of the soul and does not even attempt to prove it. And another suggestion, of which we have found some traces last time as far as ~~regards~~ regards divine providence: men's existence is not the work of kindness, of ~~(inevitably)~~. The conclusion, and partly the independently arrived at assertion, number 3, the natural law is not sufficiently promulgated. In other words, man's ignorance of the natural law is due not only to their carelessness and criminality, but also due to the absence of sufficient leisure to discover the law of nature, for the law of nature is hidden and a secret. All these points amount to a question, to a radical question, if not of natural law as such at any rate of the traditional natural law teaching, the teaching elaborated practically by Thomas Aquinas and handed down to English law through Hooker. Now if that is so we must raise the question, how can Locke build up a structure of a moral teaching after he has pulled down, more or less secretly, the old structure? How to get an alternative

show itself in

LOCKE →

virtue /

of care, of providence

?

to the traditional natural law teaching? Now we have observed last time the following points. Locke says society stands and falls by the natural law, by the natural law obligation to keep the compact. But societies are, as Locke does not tire of emphasizing, societies are ignorant of the natural law. Now without knowledge of the natural law one cannot obey it, says Locke. Hence societies owe their existence to something other than the natural law. What can that be? Answer: self interest and pleasure. ~~It does not pay to~~ break the social compact, if we use that term at all; in other words, if a man wants to break it well the chances are that he will be punished by civil authority and if he wants to break the social compact altogether and run out into the wilderness and live by himself, he will lead a very unpleasant life, and the majority of men are prevented from doing that by consideration of interest and pleasure. Now if we turn then to self interest we have to reduce it to its principle, and that is self preservation. Now I would like to refer you to only one further passage again, 157-59, the point in which Locke comes closest to speaking of the three-fold natural inclination of man in the Thomistic manner. What does he say? "Man in the first place finds in himself a proneness and preparedness to contemplate God's work and his wisdom and power in his work and to give him honor and glory; secondly he has a certain natural propensity to enter society; and the third point, he has an inner instinct to preserve himself. Now regarding this inner instinct, he says, on the top of page 159, can you read that? "No one is found, since man is driven to that, to that part of his duty--meaning to preserve himself--by an inner instinct by a very strong, exaggerated way, and no one is found who neglects himself, who abdicates himself, and all are more bent on this thing than they should be--namely, they are more bent on self preservation than they should be--there is no man to ~~(impossible)~~" In other words Locke says only of the desire for self preservation that it is a forceful thing in all men and affects them very powerfully. He does not say any such remark about the two other so-called natural inclinations, namely, knowledge and worship of God, and sociality proper. So self preservation really has a special function here, and that is very clear.

Now before we turn to our last essay, I would like to repeat ~~this difficulty~~ because this difficulty persists in Locke's work until the end. I take one passage from the Essay Concerning Human Understanding, in the ~~third~~ book, chapter 3, paragraph 18: "Morality Capable of Demonstration" "The idea of a Supreme Being, infinite in power, goodness, and wisdom, whose workmanship we are and on whom we depend, and the idea of ourselves as understanding rational beings, beings such as are clear in us ~~(these two ideas, namely, of God, and of ourselves)~~ would, I suppose, if duly considered and pursued, ~~afford~~ afford such foundations of our duty and rules of action as might place morality among the sciences capable of demonstration." Here is one line of the argument of which we have found many traces here but you see the qualifying expressions, "I suppose," and, "might". Now in the sequel of the same paragraph he gives another example of how morality could be raised to a demonstrative science and there you do not find any theology: "Where there is no property there is no injustice is a proposition as certain as any demonstration in Euclid; for the idea of property being allied to anything and the idea of injustice is given to the invasion of that right, it is evident that these ideas being thus established and these names connected to them I can as certainly know this proposition to be true as that a triangle has three angles equal to the right." (Inaudible sentence) These are what I think! called analytical propositions: you only have to know the meaning of the terms to see that must be. These are the two entirely different forms of establishing a moral teaching or say a natural law teaching, what Locke

had in mind. First, a traditional theological one. The other one has nothing to do with theology. But this is a very imperfect indication of that other kind of natural law teaching. Why? Why is the teaching which begins with the proposition where there is no property there is no injustice, why would this be very defective, (inaudible) ... What can you do with it? Can you not answer, so what? Why does that cease to be a perfectly legitimate reply? If Locke can show to you that without property you will be a very poor fish, you will be very unhappy--in these analytical statement, Locke is silent about the natural sanction; these analytical statements do not tell you why property is good, or necessary--why government is good or necessary. The complete Lockean argument, which he never clearly developed, would show that man needed property, and that man needs government, and conclude from that the whole system of man's duties and rights. Construes

I think I read one more passage from the Essay Concerning Human Understanding, first book, chapter 3 again, paragraph 6. "I grant the

those rules to us." ^{you have} a complete system of the duties of man. (inaudible) This includes, for example, the prohibition against suicide, not to take examples from unnatural sexual crimes. Think of the traditional natural law teaching. That is based on a theological premise, allegedly on a theological premise which can be established by natural reason alone. A natural theology, not a revealed theology. Now then Locke says that there are several moral rules which can be understood and seem to be valid without reference to God and these are the rules of action which are directly related to public happiness. So that you cannot have a very wasteful government and you must have a certain decent proportion between taxes and what people can bear, and many other rules of this kind; that everyone can see even if he lacks knowledge of God. That is a natural law teaching of an entirely non-theological kind. Now what Locke did, partly in the Essay and more in the Treatises is--the emphasis is entirely on this part, like no taxation without representation, that Locke establishes with no theology; but he creates the impression that this political natural law teaching stands and falls by the theological premise. The true plan, which is much closer to Hobbes as we shall see, he never sets forth clearly. The only indications he gives are the difficulties in the argument, both in the Treatises and especially in the youthful essays.

Now let us turn now to the last three essays, because I think the ~~new~~ doctrine regarding the law of nature comes out most clearly here.

Q: Does Locke believe that a man must be educated to know the natural law? (Mostly inaudible response to question:) There is no inborn knowledge of any kind in Locke, and least of all, of moral virtue. He uses the term a student of the natural law. Decidedly, one must be a student.

TAPE BREAK

S: Let us read the first paragraph, because that gives an indication of the alternative to natural law.

A: "Since there are some who trace the whole law of nature back to each person's self-preservation and do not seek its foundations in anything greater than that love and instinct wherewith each single person cherishes himself and, as much as he can, looks to his own safety and welfare, and since everyone feels himself zealous and industrious enough in self-preservation, it seems worth our labour to inquire what and how great is the binding force of the law of nature. For if the source and origin of all this law is the care and preservation of oneself, virtue would seem to be not so much man's duty as his convenience, nor will anything be good except ~~what~~ it is useful to him;..."

S: Yes—~~anything~~ morally good."

A: "...and the observance of this law would be not so much our duty and obligation, to which we are bound by nature, as a privilege and an advantage, to which we are led by expediency. And thus, whenever it pleases us to claim our right and give way to our own inclinations, we can certainly disregard and transgress this law without blame, though perhaps not without disadvantage."

S: That last line must be translated differently: "and therefore we can perhaps not transgress the natural law without harm, but we can certainly transgress it without crime whenever it pleases us to abandon our right." That he completely mixed up.

What does he mean by that—"whenever it pleases us to abandon our right"? He is speaking strictly on the Hobbian basis: right of self-preservation. Hobbes' argument was this: a declaration of fundamental rights—that rights cannot be preserved without peace; therefore, I must strive for peace. The conditions of peace and nothing else is the content of the so-called natural law. The condition of peace is, of course, that you behave with tolerable decency to your neighbors. And what Locke says here is this: that if I want to behave nastily toward my neighbors by killing and beating them, and so on, this will be probably not without harm; meaning chances that you are hurt again are considered very great. But there is no crime involved as far as the natural law is concerned, as distinguished from the civil crime. Because what do we do if we commit such an act? If we are such fools that we cede from our right to self preservation, we endanger our life or security unnecessarily. That is the meaning of this passage. So this, then, is the alternative which Locke does not here criticize. What he does in the sequel is to give a fairly ~~reasonable~~ description of what obligation means, and the editor has taken great pains to find out these obscure English writers from whom Locke ~~has borrowed~~ has taken this passage. I have not yet had the opportunity to look up these men. I am sure there would be very profound and little changes which the editor did not emphasize. But that must be done by someone else.

I would like to turn to a few points on page 189, secondo, because I do not believe that you will find out much from the text. "Locke gives three arguments—that is the only interesting part of the first line of this chapter—in which he tries to prove that the natural law obliges all men.

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Now let us read the central argument that synthesizes the theme. Page 169.

A: "If natural law is not binding on men, neither can positive divine law be binding, and that no one has maintained. In fact, the basis of obligation is in both cases the same, i.e. the will of a supreme Godhead. The two laws differ only in method of promulgation and in the way in which we know them: the former we know with certainty by the light of nature and from natural principles, the latter we apprehend by faith."

S: Now, what do we say to this argument? That is the central argument; how does he argue? Why is the natural law obligatory?

A: He argues that it is obligatory because it is the will of God.

S: No, that would not be quite right. Because that has to be proven yet. But how does he argue here? He argues from a conceded premise; and what is the conceded premise?

A: The positive divine law is binding.

S: ~~is~~ obligatory. On what grounds does he accept that as his premise?

A: On the grounds that he claims to know that it is?

S: What do you say to this...suggestion?

A: [Inaudible... I am not sure (?)]

S: In the next passage, or in other passages where he speaks of this, he quotes this passage: that the majority of men had never heard of revelation. So, in other words, he argues here on the premise which from his point of view, is wholly problematical, and certainly untrue, to him, that no one had denied the obligatory character of the divine law. Then he says if you grant that, you must grant the obligatory character of the natural law. What Locke indicates more seriously by this, I believe, is this: that the traditional natural law teaching is in fact based on the revealed teaching, and therefore he feels free to argue this way.

pl 2
Now we turn to the much more important, at least as far as I can see, up to now, seventh essay which has the following ~~major~~ First, objections to the universal perpetual obligation of the natural law, which is in the first paragraph. In other words, here Locke states explicitly a case against the universal and perpetual obligation of natural law. Then in his sequel on page 197 he describes in a traditional way the character of the universal and perpetual obligation. Then, pages 197 to 201, he proves the assertion; and in the end, pages 201 to 203, he refutes objections to that. Now let us concentrate on the main points.

What is the objection to the assertion that the universal law is universally and perpetually binding? You have only to think about it; I mean, they are not alien things, forgotten; they are still mentioned in every elementary social science course. That is the beginning of social science.

What is the objection? Why can it not be binding, or obligatory?

A: Because everybody has different attitudes. It is the whole conception of relativism.

S: Yes, sure. In other words, there is an infinite variety of opinions on what is right or wrong. And that shows that men cannot have any certain knowledge about natural law. In this context he gives a few examples of what strange opinions people had. Will you read that? [p. 191.]

A: "Hence, among these nations, thefts are lawful and commendable, and the greedy hands of robbers are not debarred from violence and injury by any shackles of conscience. For others there is no disgrace in debauchery; and while in one place there are no temples or altars of the gods, in another they are found spattered with human blood."

S: Yes, now let us stop here. What does he mean by this: that there are countries in which there are no temples or altars of gods? What does that mean? I have referred to this problem on former occasions: what does that bespeak, the absence of temples of gods?

A: He states explicitly that it is a duty of the law of nature to worship ~~gods~~ God.

S: Surely. ^{But} Is there not a difference between gods and God? In other words, the absence of polytheism is as much a crime against natural law as the presence of theft and piracy are. Of course, it would be unfair to say that Locke would say that polytheism is a natural law duty. But what he means is that natural law itself is neutral to the difference between monotheism and polytheism. You have to worship higher beings. Maybe only one, but—I have discussed this on a former occasion as some of you will remember. Now when we look at the sequel on the next page after he has stated this argument, he says, in spite of all this ^{he} asserts that the obligation of natural law is perpetual and universal. Yes, but it is not sufficient to assert, without proof. Now where could he find the proof? What does he say in the immediate sequel? "We have already proved that there exists an obligation of this law and now we will discuss how far or to what extent this obligation reaches." So Locke claims that we have already disposed of the difficulty created by the allegedly infinite variety of human opinions regarding right and wrong. He does not even attempt to refute it here.

broad object // The others are more or less scholastic explanations—very important in themselves but not too important for the ~~ground~~ of these arguments because the questions with which we are concerned is the ground of the obligation of the natural law, and not these very important distinctions ~~between~~ that all men are always obliged not to commit murder. There are other things to which not all men are always obliged. You are not always obliged to help the poor. For some humans may be so poor themselves that you cannot help them. You are not always obliged to be a father, a brother, or a husband, etc. Because the obligations here are rather of this kind: if you are a father you have certain obligations. And if you are a husband.

for example

But there is no obligation to be a husband. And various other distinctions which are not necessary for our present purpose, ~~because of the same nature.~~ *and so we may skip them.*

Now, what else does he here consider? In the sequel on page 199, we find a very strong statement of the view that natural law is decidedly the rational law, but we have found these thoughts before. Since natural law expresses what is convenient or fitting to a rational nature, to men being like man, it is unchangeable, because the essence of man is unchangeable. In the sequel he gives, then, this point which Mr.—— quoted among others, that the natural law is absolutely necessary and evident—as evident as a mathematical proposition. He has said this before, but what is the difficulty on which he does not touch here? The natural law is as rational, as evident, as necessary as any mathematical proposition, and therefore it is obligatory. What is the difficulty?

A: *To whom it is*
[Inaudible.../self-evident...]

S: That's it. So, in other words, not all men are mathematicians. Are all men students of the natural law? Can there be studies of natural law? If the natural law is conceived of as something to be discovered, gotten out from a hiding place, then the majority of men must be expected to be ignorant of the natural law. And then they cannot be found guilty of transgression. Only of the natural law has the character of natural inclination or of something which one can call implanted in the minds of man can it be obligatory. That is the issue which goes through the whole book.

In the central argument here on page 203, Locke gives a further explanation. Let me first say this: the objections which he refutes at the end of this essay are not the real objections raised at the beginning of the essay, but more subordinate. For example, the famous difficulty that it seems that God in the Bible commanded the Hebrews to steal things from the Egyptians. God himself seems to have commanded a theft. Now if God, the legislator of the natural law commands people to disobey, what can we expect of any human legislator? That is an old question and Locke merely repeats the old answer: that God as the ^{creator} ~~superior~~ of things changes rightly any property relation. In other words, God did not command to steal: God, out of his power, deprived the Egyptians punitively of their property right and gave it to the Hebrews. So the prohibition against theft stands unimpaired. That is simply a repetition of the old argument. Now, let us turn to the central argument on page 203. The second one.

A: "If sometimes we are, and sometimes we are not, bound to render the same obedience to parents, then this shows that the binding force of natural law is not perpetual; nay, rather, if a prince commands differently, we are not bound to obey parents. Then, in that case we reply that we are no doubt bound to comply with the orders of parents but only in things lawful, and this obligation is never annulled; but of a king commands otherwise, a parent's orders become unlawful; for instance, an order to stay at home and show concern for the family, when the king is summoning a man for military service. Thus the binding force of natural law does not by any means cease, yet the nature of the case itself changes."

S: Yes. I wondered why Locke assigned such a conspicuous place to this argument. But it appears very plain if you argue as follows: you have here the father, and the command of the father is legitimately overruled by the command of the king. The father says to the son, You work on the farm and take care of the family property. The king says, No!, because you must join the army. The son has to join the army. You have here a proportion: the lower superior—the father; and the higher superior—the king. Now, if we take that proportion and infinitize it, we come to God. What about the relation of the princely command to the command of God? The same rule would apply, of course. The command of God has a higher rank than the command of the prince. But what is the problem here? Those of you who have read Hobbes may remember.

A: There is one problem, that you have a right that is ultimate for self-preservation, and you have a right to defend preservation.

S: No. I mean simply this prince and God; the sovereign and God.

A: The relationship is not exactly the same as between two men on earth.

S: But still, they are not coordinate, the father and the prince. The father is subordinate to the prince; the prince is higher. Now, God is infinitely higher, the highest. And therefore the command of God overrides the command of the prince. But what is the consequence of this statement of the political problem? You have to obey God and not the sovereign in case of conflict. In case of conflict, otherwise no problem. But that conflict is such a great issue because in practice it meant a dualism of powers, power spiritual and power temporal; and that was exactly the target of Hobbes' doctrine of sovereignty. I think Locke alludes to this here. Because we shall see in the treatise, contrary to a very popular view, Locke does not allow resistance to the law of the secular government. For, what does resistance mean? When we ordinarily use it.

A: [Inaudible.] [Revolution]

Revolution is another thing. But,
S: A, When we think of resistance we think of individuals. But that is for Locke a very great problem. Because Locke encourages a resistance of the majority, legally admits the possibility of a resistance of individuals. But that is of no importance whatever, that amounts to nothing. We can perhaps restate another passage: If some injustice is done to this individual here and that individual there, that politically does not exist. But if the majority is downtrodden, then the majority is entitled and able to carry out a revolution.

Let us turn to the eighth essay, which is in a way the most important because here Locke states throughout an essay an alternative to natural law teaching altogether. Now first he quotes the famous enemy of natural right, the old skeptic Carneades, who has said there is no natural right: jus naturale est nullum; that men are by nature driven to take care of their self interests. They are not by nature driven to act justly. That is a clear-cut analysis. But now in the sequel we see that Locke is more subtle than Mr. — thought. Let us read the sequel, after the question *question*.

A: [page 205, line 7] "...and there is likewise no such thing as a natural law of justice, or, if it exists, it is the height of folly, inasmuch as to be mindful of the advantages of others is to do harm to oneself." This and other such arguments Carneades once maintained in his Academy. His very sharp intellect and power of speech left nothing untouched, almost nothing unshaken, and there have been a number of people ever since who have assented to this doctrine very eagerly."

S: "...with the greatest zeal or partisanship."

A: "Since these people have lacked virtues and those gifts of the mind whereby they might prepare for themselves the way to honours and wealth, they have complained that mankind has been treated unfairly and have contended that civil affairs were not conducted without injustice, as long as they were debarred from general and natural advantages destined for the common good. They went so far as to proclaim that the yoke of authority should be shaken off, and natural liberty be vindicated, and every right and equity be determined not by an extraneous law but by each person's own self-interest."

S: Let us break here. What is the characteristic of these people?

A: They are the "outs."

S: Yes, but still there can be "outs" who are not inept people. But they are inept people. I think we can say they lack the power to earn honor and virtue... They lack the virtue and gifts of the mind needed for acquiring honors and wealth. And they are concerned with this, they are not very happy about this. Then they say they have been unjustly treated, and they make an appeal to natural liberty and ~~the~~ of course call for the abolition of government. These people are not Carneades: these are followers or successors of Carneades. Carneades did not have this zeal and partisanship, because he was not so concerned with money and wealth as these people are. ~~But~~ Locke makes a clear distinction. But above all, let us look at the substantive criticism. It amounts to this: they deny natural law and in the same breath they appeal to natural law. They say a terrible injustice has been done to us. Carneades would not say that. He would say they took care of their interests and hurt me. And if I had the opportunity I would do the same. In other words, Carneades would argue more like Mr. Bentham. These fellows, they are not so bright, and with misguided moral indignation blame society for their own ineptness. And they are the same people whom Locke will call later on the quarrelsome and lazy. Instead of really intelligently working toward improvement, they complain. And the rational and industrious part of mankind to which Locke naturally belongs and ~~to~~ whom he speaks later, is simply the reproof of this iniquitous opinion.

I warn you.

But now let us see: how does he proceed? ~~He says in this way,~~
~~He says in this way.~~ The teachings of Carneades, the theoretical teaching of Carneades is one thing. The theses of these—how would you say this? "Outs" is misleading because the "outs" are sometimes as clever as the "ins" Suckers would not be the right word, but "the inept segment"—let us say the quarrelsome and lazy. That is not Carneades. Good. They are people who misuse and

misunderstand the arguments of Carneades. How does Locke meet Carneades? Because these other people are easy to meet. They are simply contradictory. How does he meet him? What does he do? Carneades had said there is no natural right. The basic thing is self-interest and nothing else. Let us read the first paragraph afterwards on the same page.

A: "First, by the basis of natural law we mean some sort of groundwork on which all other and less evident precepts of that law are built and from which in some way they can be derived, and thus they acquire from it all their binding force in that they are in accordance with that, as it were, primary and fundamental law which is the standard and measure of all other laws depending on it."

S: Yes, that's it. Now what does he do? I mean Locke is very clever, and one must watch him very carefully. The thesis of these people was--of Carneades was-- that private utility is the standard. Locke makes it, private utility is the foundation of natural law. That comes somewhat closer to Hobbes. But then he takes a further step: private utility being the foundation of natural law is the fundamental natural law. Man has not only a right to take care of his interests; man is duty bound to take care of his interests and this must be his overriding duty. Any other consideration, any other duty, must be measured against that highest duty--my self-interest. And if it endangers my self-interest a bit, I commit a subverse crime in doing it. Therefore Locke argues later on when he speaks of the famous models of virtue like Fabricius and Grotius, and says if this view is correct these paragons of virtue who devoted their lives to their land and to mankind were the greatest criminals, of course. That is perfectly evident, because by neglecting their self-interest, they neglected the most basic, the highest and most all-conclusive. So, that is step number one.

Step number two we find on the next page. Here he argues--in the first paragraph, because we cannot read everything, I will give a brief summary--he argues as follows: We know now we are obliged to think first of all and most of all of our dear selves--our own selves. And now the question arises: but maybe we are mistaken regarding our self-interest. We may be fools; it is not so easy to know what is in your ~~self~~-interest. In this case one could say, well, as sensible people we ought to be subject to the judgment of a man wiser than ourselves. And here Locke gives this answer, in the middle of the paragraph: No one can be the equitable and just estimator of another man's advantage or benefit. Everyone must be the judge: because you may be a very great fool, but you have a much greater interest in your self-interest than the wisest man in the world can have. That is the famous Hobbian argument which by Locke takes over. Now, what follows from that, that I am by nature bound to think of nothing but my own interest as I see that interest? Let us make one assumption which Locke makes which is not altogether unrealistic: that most men think of their immediate interest, do not think ahead. Then it follows that these people, the majority of men, have no higher duty than to think of their immediate advantage. What follows from that? If you have to think only of your immediate advantage, and every other consideration must be subordinate, what follows from that regarding human relations?

A: [War?]

S: --Of everybody against everybody. That follows as sure as anything. Now, that is the first point which Locke makes in the central argument, on page 211. But then he makes an interesting switch; again a very clever move. The war of everybody follows with necessity and obviously if everyone thinks and must think of nothing but his immediate advantage. Now Locke makes a step back and drops the immediate advantage and speaks of advantage simply. Now let us call this, to make the thing clear, the long-range interest. If all men would think of their long-range interest, they would not grab everything as they like it, but they would think of the consequences, of the war and the unpleasantness of constant war of everybody against everybody. People thinking of their long-range interest, as Hobbes put it, or almost put it, would ~~think of peace and then~~ the most urgent thing is to have public peace. Then we can think of our immediate advantage to the extent that it is necessary. What does Locke say to this point, which ultimately he admits; but he makes it in a round-about way because he wants to bring out another lesson? What does he say in this passage? He says if all men follow their private long-range interest, there follows not peace, but war. How come? Let us read the beginning of this paragraph on page 211.

A: "Secondly, it is impossible that the primary law of nature is such that its violation is unavoidable. Yet, if the private interest of each person is the basis of that law, the law will inevitably be broken, because it is impossible to have regard for the interests of all at one and the same time. In point of fact, the inheritance of the whole of mankind is always one and the same, and it does not grow in proportion to the number of people born. Nature has provided a certain profusion of goods for the use and convenience of men, and the things provided have been bestowed in a definite way and in a predetermined quantity; they have not been fortuitously produced nor are they increasing in proportion with what men need or covet. Clothes are not born with us, nor do men, like tortoises, possess and carry about shelters that have originated with them and are growing up together with them. Whenever either the desire or the need of property increases among men, there is no extension, then and there, of the world's limits."

S: Up to this point. You see, he links all the time desire--which means ~~there//impossible/~~--and need. But morally, the case of the two things is always very different. We will concentrate on the more serious case, namely, the necessity. What Locke says here is this: there was enough around available for men at the beginning when the population of the earth was small. But then the number of men grew. The need is now for much more. This need is an additional need; it is not fulfilled by nature. What is the consequence? War. There is too little to be sufficient for all, and therefore men must fight. So it is not only immediate, foolishly understood self-interest, but long-range interest, self-preservation, the most fundamental needs of the body for food which are not supplied sufficiently by the stingy nature. You see here now the argument from providence comes in. Someone, Mr.--, you knew such a social science professor or a professor of economics who says that.

A: They claim that men are determined to maximize their wealth.

S: Well, they want to maximize, not satisfice. You see, I know some of that.

But the main point which I want to make is this: Locke makes his point in a round-about way, and on the face of it, it is an objection to Hobbes. Not ^{for reasons} peace is the primary issue, but food. Food: and that means, ~~originally~~, we see in the treatises, ~~providence~~. So in the first place we come into the realm of the war of everybody against everybody again. How does Locke go on from here? I think we must step back and think for one moment. Granted that there can be such a scarcity of provisions at such times that an individual may be better off by fighting than by peacefully starving. That is the conflict which Locke has in mind. But generally speaking there is a different connection, as Locke admits, of course, namely between peace and plenty. You can work your fields better in peace than in the opposite. So this is only an extreme possibility of great importance, especially for foreign relations, by the way, ~~between~~ the distinction between have and have-not nations, and such considerations. So eventually it boils down to this, the old Hobbian argument: for self-preservation, including food supplies, peace is preferable to war, with a view to self-preservation and self-interest, and therefore the requirements of peace are the requirements of natural law, as they are in Hobbes.

There are at least two passages, here on page 216, and on page 207, in which Locke emphasizes the harmony between natural law and peace on the one hand and everybody's private interests on the other. Honesty is the best policy, but honesty, from Locke's point of view, that means honesty is good only because it is the best policy. He presents this in a traditional guise which we can see well.

There is, however, this remark about the conflict, the necessity of conflict, not only with a view to immediate advantage, but also with a view to long-range advantage, which remains an important consideration for Locke. There is a fundamental harmony between self-interest and the public interest. But there is no complete harmony. Locke is not such an extreme individualist, to use this word, as he is frequently said to be. What is the motto of the treatise? Does anyone have it with him, the Treatise on Civil Government? "Salus populi suprema lex esto." The public safety should be the supreme law; not the safety of the individual. That is the crucial implication. The public safety takes care of the safety of the individuals, generally speaking, but not universally. The same characteristic difficulty, I believe, which you could already discern in Machiavelli. The public good, the public safety, the fatherland, as Machiavelli says, is the overriding consideration, but ultimately based on the self-interest of individuals with the understanding that generally and broadly speaking there is a harmony between the interest of the individual and the interest of society; but not every individual: some individuals from time to time get hurt without deserving to be hurt and that we must take in our stride. Of course, Machiavelli is so notorious as a Machiavellian that no one is surprised by this assertion. In the case of Locke who is presented as the most powerful defender of the right of the individual, it may sound strange. But if you look at the argument of the second treatise more closely, lip-service is paid to the right of every individual, the factual provision is only for the majority of citizens, which is an entirely different proposition. He says so. I do not have the treatises here; I believe it is in paragraph 203 where he speaks of that. And there are other places. "If the manifest acts of tyranny reach no farther than

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some private men's cases, though they have a right to defend themselves, and to recover by force what by unlawful force is taken from them: yet the right to do so will not easily engage them in a contest, wherein they are sure to perish; it being as impossible for one, or a few oppressed men to disturb the government, where the body of the people do not think themselves concerned in it, as for a raving madman, or heady malecontent, to overturn a well-settled state, the people being as little apt to follow the one, as the other." He all but compares the resisting individual to the men. The real thing is to have an opportunity of a situation which gives the majority a reasonable control of the government; and the majority are then safe, there is no possibility of a guarantee regarding justice to individuals.

A: Regarding the conflict between long-range self-interest and the idea of war. Presumably if natural law or duties and obligations are identical with public interests, then in a State where physical scarcity is the condition, the only difference is whether the war on the one hand has more people getting killed, or in the public interest they are dying of starvation ~~because of the~~ ~~scarcity of food~~. *The end effect is almost the same.*

S: Yes, but look at it from the point of view of the individual.

A: The individual's rights are respected in the public interest, but he dies nonetheless.

S: I am sorry, but I must make certain objections which I have learned from the TV. I have never observed it locally, but I believe that people who are extremely brutal and clever have in such situations a greater chance of survival than nicer people. So they would not be satisfied with your general remark that 70% of the population is going to perish. They would say, we won't belong to that 70%, so you can kill them. What they do would not be very nice. In other words, they can always work from statistics. You always have to think of the individual who is particularly exempt from the statistical majority, [Inaudible.]

A: But the net result would be the same: 70% of the population would die.

S: But, don't you think it makes a difference to the individual who dies, and that it creates certain sentiments not to say attitudes on the part of those individuals who do that? That is not an unimportant consideration. *Especially when we speak of morality, and not merely of statistics.*

The point which Locke makes and which goes through the whole book, although it comes to the surface only in these four or five passages is this: the overall situation of man is of such a nature that he is not provided for, not taken care of. He must take care of himself, and that means conflict, fighting; and morality can come in only after these basic certain jobs have been taken care of by men in human government. That is the point. And *always* with this very great reservation: that if such a crude *situation* arises, by natural catastrophe, or in one way or another; this old, terrible condition, this most uncivilized condition will arise again. Locke is such a master of gentle and easy-going language, like a good old man who is telling a nice

story, [Inaudible], that one can easily overlook this toughness, but that toughness is there.

I can only repeat what I said at the beginning: that the proper point of view for understanding Locke, certainly his later writings, *the classic ones*, as I have learned earlier, is that Locke was clearly confronted with this alternative of the traditional natural law teaching; St. Thomas and Hooker on the one hand, and this attempt of Hobbes to build a natural law teaching—if you can still call it that—on the basis of self-preservation alone. And he presented to the public a doctrine which at first glance looks like a kind of modernized version of Hooker—a big modernized version of sovereignty, and rights of the individual and state of nature, etc. But then a closer look, a really precise analysis shows that Locke himself at no point believed that the ~~body~~ of his edifice was the traditional natural law, which was merely a facade, but was rather something like Hobbes thought. And these earlier essays he rightly did not publish, because here the self-contradictions, *the other* shocking things are so obvious that this would not have made this impact which the Treatise on Civil Government did make. You know, it is a book of 53 pages. If you contradict yourself on page one and page 53, you still may remember what you said on page one. But if you take a book of—how many pages do the treatises altogether have? 300 pages? 250. Well, you see you need a much better memory to keep in mind the content of 250 pages than of 50 pages. So the contradictions of Locke may, of course, somehow discern themselves. But not taken seriously. I do not believe that this book if it had been published by Locke would have had the tremendous success which the treatises had. There is a kind of smooth going-over of which not all readers become aware. From the very idyllic, beautiful state of nature which is a kind of paradise, and where no problems exist, to a very tough Hobbian war of everybody against everybody. That comes to the fore only much later. The corresponding contradictions are much grosser here.

Incidentally, the theological issues are, of course, not mentioned in the treatises. They are, in fact, in the Essay Concerning Human Understanding, but also in very different *places*, much ~~widely~~ *different* from each other. In this *book* /short/ of 53 pages, you have the discussion of the natural law teaching plus the theological premise and with such strong, glaring contradictions that this never would have had, I believe, the fame which the treatises and the Essay Concerning Human Understanding had.

A: As far as the status of public safety in which individual safety is concerned, might this not be a façade itself? May not this be a façade of Locke, the supremacy of the public safety over individual safety?

S: All right, but in order to raise the suspicion, you must have a cause for it. When I had some difficulties concerning natural law teaching, I noticed some glaring contradictions, which raised the question, could an intelligent man have meant them? A great paradox. But what is self-contradictory in the proposition that the common good crudely and massively understood, the good of the large majority is the objective of government, and that it does not give the guarantee against occasional injustices against individuals. I am speaking not only of those things, for example, where by circumstantial evidence a man is condemned to death. Harsher things. What is the difficulty in that unless you say the notion is too crude?

A: I wondered how you can square that with the notion that self-interest is the fundamental natural law unless you identify common interest with self-interest.

S: But to a certain extent is it not really necessary to do just that on very massive common-sensical grounds? Is it not true that a depression in this country, a defeat of this country would do a very great harm, to say the least, to almost all of its members? Is it not generally speaking true that the well-being of the individual depends on the well-being of the society to which he belongs? There are exceptions. But broadly speaking, is that not so? I think that is really an old common-sensical story which is only denied by certain people who ~~refuse to see~~ massive things because their methods are too refined to allow the perception of the massive things. Because they would say that if some are left out, then it is no longer common good. But from a crude, practical politician's point of view, the good of the over-riding majority is identical with the common good. For example, there are people who derive great benefits from contaminated food. Their interest is hurt by food-purity laws. Hence, food purity-laws are as little in favor of the common good as the

. But the funny thing is that if you stand up in the market place for food-purity laws you will be listened to. But if someone would stand up for contamination of food, what would happen? That is an empirical proof that there is something called the common good. That not everything can be defended. Not everything can be publicly defended.

A: It just appeared to me that if—that there is somehow a tension between these two. If you want to pose self-interest as a fundamental law of nature, it seems to me you have a moral doctrine intended to instruct men that will empirically be conquered.

S: In the first place I believe—and perhaps we will have the chance to speak on that on a later occasion—it is a very poor basis for morality. But that it can, within a certain region, make sense, and is certainly preferable to that completely blind relativism ruling today, that I still would say. You still talk about real things in the real world if you speak of men's desire to preserve themselves. There is empirical evidence for that: most people, I believe, when some one tries to shoot them, take cover. And in other things: when there are starving people most of them try to get food—an empirical fact. And there are many other things which you could find. So there is something to that, and that is the major point. You can also see from this basis what the importance of food compared to other items is, and so forth.

very serious In other words, self preservation is something real. One should consider ~~the thing~~. The question is only and indeed whether that is a sufficient basis for understanding man's moral and mental life. And that I believe does not work out. But for many crude political purposes it is helpful. That I believe is also the element of truth in old-fashioned utilitarianism, which in a way

A: [Inaudible question to the effect that Locke has the idea of will rather than rational behavior. An element of divine will, divorced apparently from a divine intelligence.]

S: Locke has, of course, dealt in part with that. Let us see what the problem is. In the first place, we have the rational _____. The inherent criterion that something is fit for a rational nature. And that, a rational nature can know. We call that conscience. For example, that lying is mean, unbecoming, that is a rational conceit. Locke says this is not sufficient for making a law. There must be in addition a superior whose will it is that we comply with these rational conceptions, or whatever we might call them.

A: Yes, but this ties in with the question of Reason only needs to apply for him on the level of the few to whom the law is given.

S: I believe I know what you are driving at, but can't you state it more precisely? I think the meaning is this: Granting that these prescriptions or counsels are wise or rational, must not an all-wise creator necessarily approve of it? You see, in my earlier statement I presented the difficulty that was a very big issue of the _____ of God's omnipotence. The relation between God's power is this: must one conceive of the relation of God's wisdom and power in almost Platonic terms: that God looks, as it were, at an eternal rational order and cannot help obeying it; or is this in God himself, and therefore God is not subject to something in a way higher than he. This great difficulty for the theologians was important because it was similar to the question of the relation of omnipotence and wisdom. And Locke appeals to reason.

We saw last time a few indications of where Locke alludes to that. For example, the section on Descartes' demonstration of the existence of God [24?] He speaks of God's power and wisdom, and never of his omnipotence. In other words, I believe he wants to indicate by this that there is a certain difficulty known to him regarding the relation of omnipotence and the perfect wisdom. Does not perfect wisdom limit omnipotence, and how can we call it then omnipotence? You know, there is the famous discussion where the old theologians admitted that the necessary limitation of omnipotence is merely and distinctly absurd, because that does not exist. But there were always more or less rationalistic theologians who enlarged that and said if you had the choice not between something non-contradictory and contradictory, but between the wiser and the less wise, is God not bound to choose the wise therefore? I take the later formulation of Leibniz: this world is the best of all possible worlds. Why? God must have chosen the best possible world, otherwise he would have been unkind and unwise. In other words, here, whenever the issue of omnipotence comes in tension with wisdom, difficulties arise, and therefore, in compliance with this theological susceptibilities, and I am sure that occurred among the Calvinists; and he wrote in an atmosphere where Calvinism played a considerable role. Then, he preferred to speak of the will.

[Inaudible: I do not know what part Calvinism plays in history,] but I think in Locke it plays a considerable role. The difficulty comes to light the moment you make this assertion: man recognizes God is evidently a rational _____. Then where does God come in in this relation? If God is infinitely wise, must he not have commanded man to do that which is evidently wise, and then you have the notion of a necessity which limits God's power. Locke, of course, does not solve the problem by this formulation, but he conceals it verbally by speaking of the will.

[Rest of the discussion—questions and answers on theological points—inaudible.]
 Locke does not give a theological solution.
 END OF TAPE. AND LECTURE.

(. . . and then in the Second Treatise, in beginning it he starts off, "Here we have a treatise on . . .")

course(?)
The beginning of the Second Treatise, page 121, reads as the immediate sequel. Well, (unfortunately,) it wouldn't be decisive either way. Would you say that this was part of the First Treatise or part of the Second Treatise?

(I had believed that in referring to the treatise

Well we will take that up later. Now, regarding this missing part, you said, if I understood you correctly, it must have dealt with the question of the relation between Biblical history and the state of nature. Did I understand you correctly?

(Yes. In other words, that it dealt with the problems that Filmer brought up that were not strictly scriptural.)

(?) Not strictly scriptural. That is the point which you emphasized. Well, I'm not so sure yet that you are right there, but, at any rate, if you would say (this states the relation of the state of nature) and Biblical history, that would be somewhat closer to what I suspect. Of course Locke would have to take up the question whether Biblical precedent is not in favor of a much more absolute monarchy than Locke would accept... The limitation to non-Biblical subjects I think, which you seem to have suggested, is not warranted. But we discuss this subject later on... You seem to have suggested that there is an important difference between the Lockean doctrine regarding property and the Biblical doctrine regarding property. Can you restate it.

(Well it seems to me that in the Bible that government came about after the Fall, or as a result of the Fall; property was also largely a creation which came about as a result of the Fall. Now I am not certain and am certainly no expert on the Bible.)

Still, what would be the difference between Locke and the traditional Biblical teaching?

(Well, the traditional Biblical teaching did not consider that this absolute property that Locke talks about as coming about in the time of Noah.)

But what kind of property is an alternative to that, i.e. what you call the absolute property?

(Well, communal property.)

Ah ha! You should have stated it more clearly. I believe that he suggested that the Biblical warrant is in favor of communal ownership and not for private property, and that would of course make a tremendous difference. So, if that is true, then Locke would have known that his doctrine of private property, at least as elaborated later, was decidedly non-Biblical. That was the main point you made regarding this.

Well, in order to clarify these very important questions, one must of course first study the fifth chapter of the Second Treatise, "Of Property"; but in doing that, always consider the passages of the First Treatise regarding property. To mention only one point: in discussing property in the first part, Locke admits a duty of charity as a kind of mortgage on property. In the second treatise he is completely silent about it. The ~~order~~ of property has only rights and no

duties except those imposed on him by positive law, e.g. taxes and so on. But the duty of charity is completely omitted. Now in case of attacks Locke could always say: "But I spoke of it in the First Treatise." And you have to make your choice whether you regard the First Treatise only as an introductory treatise of a merely polemical intent, whereas the second contains the positive teaching.— This would lead to a very long lawsuit which Locke would win by sheer persistence, of which he has given beautiful examples in his theological writings.

You know it is customary now to read only the Second Treatise in present day political science and philosophy departments. I believe you could prove that even by looking at what is being done in the readings prepared for such courses, readers in political theory. I would assume that all the clippings are made from the Second Treatise. This is the common view. The Second Treatise was of course the one that had the most telling effect, especially afterward, i.e. the 18th century; there is no question about this. But that does not justify the neglect.

(Ques: I had a slight difficulty with respect to Locke's comment on the question of holding an excess of goods with respect to a needy brother. On page 34 (top) end of the third line, ". . . so that it cannot justly be denied him when his pressing wants call for it;" and then later on he states that charity. . . This might present a difficulty. It seems that there might be a distinction between justice and charity.)

Because later on he makes the distinction between justice and charity? In other words you would confirm what has been said? (by another student)

(Well, it seems to be contradictory to him if Locke understands all meaning in the distinction between justice and charity. In the first sentence he says it is a duty of justice in some way to give to your brother, not a duty of Christian charity. It puts it on a different basis.)

I see. Let us wait until we come to that. Now I want to make now only a very general remark. But even if one studies only the Second Treatise as is the common practice today, one comes across difficulties which necessarily force one beyond the Second Treatise. The main point, to mention only one very striking thing, is this: the state of nature is presented in two contradictory ways. First as a state of peace and harmony, a kind of early idyllic society; and then gradually the state of nature proves to be not different from Hobbes' war of everybody against everybody, except that Locke doesn't write in flashy colors which Hobbes used. But in substance it is the same thing. On the first level of interpretation it appears somehow that Locke combined the Hobbesian doctrine of the state of nature as the right to self preservation with the traditional natural law teaching, say, roughly Thomistic, and that he did it in a very muddle-headed way. But today historians don't mind muddle-headedness at all; they regard it as a sign of genius, which of course has very good effects on all levels of higher education. If the greatest men did nothing but contradict themselves, even on the same page, why should not a young student be allowed to do the same? Perhaps one should draw the attention of the people now concerned with the sputnik and so on that scholarship also has a certain responsibility, not only the Deweyan instrumentalist pedagogy. To turn to our earlier point, the difficulties of the Second Treatise are so great that one has to read the First Treatise to find some clarity, and one has to go even beyond the First Treatise; one has to read at least a few sections of the Essay concerning human understanding dealing with morality, and above all, as I have

found out to my great surprise not so many years ago, one has to read his theological writings, especially the Reasonableness of Christianity and the Vindication of the Reasonableness of Christianity. And then one arrives I believe at a perfectly clear picture of what Locke really wanted and what he thought. The Reasonableness of Christianity is especially important for this reason: In every article or book on Locke I believe, at least in all those which I have read, you find references to Locke's caution. I mean, when people speak about Hobbes or about Hegel or about Plato and Aristotle, they don't call them cautious. But in the case of Locke this expression invariably occurs. So he must have had a caution of a peculiar kind, because in another way Aristotle was of course extremely cautious, but not cautious in the way in which Locke was cautious. At any rate, in the Reasonableness of Christianity you have a long discussion of the subject of caution which leads up to the responsibility of a public teacher or writer. And once you consider that, i.e. that Locke has certain very definite principles as to how a writer has to proceed, and that this is perfectly compatible (as Locke makes clear) in contradicting himself. In other words, it is better to contradict one's self than to say certain things which one shouldn't say. Then you see that self-contradiction can be compatible with a complete absence of muddle-headedness, namely, if the contradictions are conscious or deliberate. But I must say, on the other hand, that this observation that Locke was a very deliberate writer has not been taken seriously enough, in particular not by myself. In the meantime some younger men have made some observations, for example, Richard Cox at Berkeley who is now publishing a book on Locke's theory of foreign relations took the trouble of comparing every quotation occurring in Locke, from Hooker or anyone else, with the context. I did this in only one or two cases, whereas he did it systematically. Some very interesting things come to sight, namely, the things which Locke drops which occur in Hooker, and immediately the thing becomes much clearer than it was heretofore. And there are many other things to observe. For example, just before this class Mr. Cropsey had the goodness to tell me (you see how superficial we all are) that the First treatise is called a Treatise of Government, the second treatise is called a Treatise of Civil Government...I will try later to explain the significance of this because I think it makes sense. In the case of Locke you cannot do what you can do in the case of almost every writer today, that is, to assume that he just didn't think, that when he wrote the first title, this title came to mind, and when he wrote the second title, the other came to his mind. We must not assume that he had any thought (runs the argument here) because today printing and rushing into print is so encouraged. Some young people grow up in the belief that their earthly felicity will depend entirely on the speed in which they run into print--a very bad habit. That was absent in Locke we can be sure since it was pointed out that he was almost sixty when he published. I don't know whether he did not publish a little before, but hardly anything of note. Now let us turn then to the First Treatise, and let us consider the situation.

Filmer was the most famous representative of the school called the divine right of kings, which antedates Filmer by some generations and came up as a consequence of the reformation. Figgis in his book on the divine right of kings, one of the few historical books which I believe can really be said to have solved the historical problem. Figgis suggests this formula: that the Protestants were compelled (because of the break with the church of Rome) to ascribe to the head of their church, i.e. the king, the prince, that plenitude of power which according to the Catholic doctrine belongs to the Pope. So that

the divine right of kings, as it were, is the divine right of the Pope but now ascribed to the king. As a consequence now secular and temporal power are united. Filmer, at any rate, was the most famous representative of these men, certainly in England. His doctrine is allegedly scriptural, chiefly scriptural. There can be no popular election of kings, governmental authority does not have its source in the people, kings are appointed ultimately by a divine appointment, and hereditary rights is a necessary implication of it. The succession may be altered by divine or prophetic interference. Now that is substantially the situation in the old testament, as you know. Now in the New Testament the crucial passage is "Give to God what is God's and to Caesar what is Caesar's" together with "Be subject to the higher powers." These two principles are not incompatible, of course, with absolute monarchy. There is no provision in the Bible, both Old and New Testament, for popular control of government. There is provision for control by prophets and so on, not for popular control. Certainly, no taxation without representation; that is clear. Therefore, there is from the outset a certain tension not only between Filmer's doctrine but between the Biblical support for Filmer's doctrine and Locke's political thought. Another factor enters. The Biblical doctrine had been elaborated theoretically, and in this process modified, in scholasticism. According to this later scholastic doctrine to which Filmer refers the governmental authority has its root in the people we can say. The scholastic doctrine is much nearer to Locke, of course, than not only Filmer but than the Biblical doctrine properly, or literally understood. Because here in the scholastic doctrine the principle that all authority arises from the people in a sense, in an important sense, was recognized, and this was never stated, was not an explicit Biblical doctrine in any way. To put this graphically. We have Filmer---and at the opposite pole we have Locke. In between is the scholastic position. And both Filmer and the scholastic position are in different ways . . . to the Bible. They interpret the Biblical teaching differently. Now Locke as I say is obviously much closer to the scholastic teaching. But one thing had happened, which, of course, no one knew until three years ago (namely, when the early essays which we have discussed became available), that Locke had from the very beginning clearly broken with the scholastic doctrine with its elaborated natural law doctrine. While Filmer of course refers also to the natural law doctrine it was a very sketchy and uninteresting treatment; the main point of Filmer's political doctrine was biblical or supernatural and not natural law doctrine. So this was the general situation in which Locke approached the problem. Now in the Treatises of 1690 Locke attacks, in the first place, what we can call

(?) this silly extremism of Filmer (by which I do not (include) that in some cases he may have the better of Locke) which is on the whole a silly position, e.g. where you have to give this divine right to every usurper as well as to the legitimate king. But in attacking the silly extremism of Filmer, Locke surreptitiously lays the basis for his novel political doctrine. At the beginning of Treatise Two the foundations have already been laid, have been made clear. The refutation of Filmer is tantamount to establishing Locke's foundations. And that explains the great difficulty (ies) of the first chapter of the Second Treatise where people say "How does he know all these things?", e.g. that men are by nature free and equal and so on. Locke's answer would be this: "I have proved this in the first part." The alternative is either men are by nature unequal--then Filmer is right, because everyone else including the scholastics and the royalists admitted that man is by nature free and equal. And no one discussed

absolutely far-fetched alternatives which had no practical meaning. That Aristotle had said in classical antiquity that men are by nature unequal was not a practical proposition of any importance in Locke's time. And since the book is a practical book he leaves it at the practical alternatives. Just who would today discuss in political seriousness the possibilities of a hereditary nobility in good (conscience.) That is not a practical problem. Just as today the discussion is necessarily limited by the fact that you have liberal democracy and communism and all other possibilities do not enter the political scene, and are therefore justly treated as less important.--The same in Locke's time.

(?) Either you were a (Tory,) e.g. Filmer, or you were an adherent of the Settlement of 1688, and in the latter case you accepted of course the social compact with its premise, i.e. the natural freedom and equality of man. Locke proceeds as follows. He refutes Filmer and by this he establishes his foundation. He by-passes the scholastic position. There is no discussion of the scholastic position. You find an equivalent of that, of course, in the Essay concerning human understanding, with which I am not now concerned. Therefore, by doing that Locke is now confronted directly with Filmer, and since Filmer's authority is chiefly Biblical, or rather as Locke emphasizes, is exclusively biblical, Locke is confronted directly with the Biblical teaching regarding politics. He is confronted with the Biblical teaching not interpreted, mitigated, modified, or however you call it by the traditional scholastic interpretation. Therefore his critique of Filmer must somehow take care of the Biblical political teaching which does not obviously favor what we can loosely call popular sovereignty. Locke is concerned with establishing something we may provisionally call popular sovereignty.

There are three levels I would say. The first is the critique of the argument of Filmer, which is obvious. The second, which is in a way a part of the first but which should be distinguished, involves Locke's interpretation of scripture. He cannot meet Filmer's argument without interpreting Filmer. Locke, as it were, must bring about a harmony between scripture and his own teaching. The third level, which is in a way the most important but also the least accessible, is a critique of scripture itself. A critique of scripture existed and was even published at that time--that can easily be shown; it suffices to refer to Hobbes' Leviathan (Chapter 31 following) where Hobbes gives a criticism of scriptural authority, and in 1670 Spinoza had published his theological-political treatise, so these things were already voiced. Locke, of course, being cautious would not voice them as such.

Let us turn now to the titles of the two treatises. The first treatise is called the First Treatise of Government, the second the Second Treatise of Civil Government... This does not exclude the fact that there might be one edition brought out by Locke himself in which that is missing. That you can never tell because Locke may have changed his book from one edition to another. But let us take this text which we have. How can you explain it? What is the difference between "of government" and "of civil government"?

(Well, in a sense wouldn't his first discussion be concerned with divine government, concerning scripture and that, especially when God had a great part to do . . .)

But let us proceed.... What is the relation between government and civil government--the formal, external relation?

(Government is more(accepted) (?)

More general. That is obvious. There may be a government which is not civil government. What is that, also in the most obvious sense?

(Divine.)

But on earth. I mean the most obvious way.

(Ecclesiastical)

Ecclesiastical government. Perhaps also divine government, but let us speak now of ecclesiastical government. What is the subject of Filmer, of Filmer's book? The government of Adam in the first place and of the Patriarchs. Was the government of Adam and the patriarchs civil government pure and simple?

(It was civil and ecclesiastical combined.)

Christians always spoke of the church of the Bible, of the Old Testament. That was clear. So there is nothing surprising about that. But the difference of titles indicates to us what is not so clear when we read that, that Locke had this broader problem in mind. While Filmer, if I remember well, doesn't say a word about any ecclesiastical government which Adam had, in fact he must have meant it. The government was so complete and so all embracing, just as that of the King of England in his time; he was both the Defender of the Faith, the head of the church, and the secular governor. And therefore it makes absolute sense. This difference of titles may also have to do with other things, but that is the most obvious thing....

Now if we turn to the Preface. It was observed that Locke emphasizes in a strange way the fact which would be of no interest to anyone except Locke himself--that a part of this book has disappeared. And he even has the impudence to say that it is not even worthwhile to tell this....He speaks of that fate which has "otherwise disposed of the papers that should have filled up the middle, and were more than all the rest," and indicates that "it is not worth while to tell thee." It is a pity to know this, rather it is a pity we don't know this about the fate, but we would be much more interested in the content. And he is also somewhat ~~vague~~ about the content. Let us read the next sentence after that:

These which remain, I hope, are sufficient to establish the throne of our great restorer, our present King William. . .

There is one minor, one inference can be drawn immediately from that. It is really obvious. Who are "we"--our great restorer?

(That would be the English people.)

That is trivial but not unimportant. By no means--that^{is} a book by an Englishman for Englishmen. It is not a simply theoretical book.

(That is, what remains of it.)

That is true. I apologize. But still, what remains is the only thing which we can possibly read. But still you are quite right; to the extent to which we guess about the missing middle we have to consider that it may not be only for Englishmen. That is absolutely correct. Now let us read the sequel.

. . . to make good his title in the consent of the people, which, being our only one of all lawful governments, he has more fully and clearly than any prince in Christendom;

Can you explain that? King William has his title in the consent of the people. That is clear, but what is the sequel? What does that mean? What does it mean--"being our only one of all lawful governments"? That is not an insincere teacher's question. I'm really bewildered and I don't know what it means. I would understand it to mean that our government is the only lawful government in the world which has this title in the consent of the people. Is this grammatically possible. Well that leads to a very great and important inference.

(I think it could also be read that it means our only one out of all lawful governments.)

Yes, but would it not amount to the same thing--that our government is the only one among all lawful governments the title of which is in the consent of the people? Or did you mean something else.

(That would mean that there are other lawful governments.)

Of course, that he means under all circumstances. That is what I am driving at--that Locke here says in the Preface a government may be lawful without having its title in the consent of the people. And that is a terrific thing, because you will see later on the consent of the people is made the sole title. Perhaps Locke understood something different by this. You have doubts?

(Well the only doubt I have is that it seems to be out of order somehow. He says to make "good his title", his title, the King's title is it not? He continues: ". . . in the consent of the people, which, being our only one of all lawful governments, he has more fully." That makes "being our only one" very ambiguous.)

Yes, that is Locke's hobby. Alright, let us then take the first and second part. The title in the consent of the people he has more fully and clearly than any prince in Christendom. That means that if the consent of the people is a good title, then he has it more fully and clearly than any prince in Christendom. This, by the way, is also ambiguous, because if you speak of two bad men, and say that one is superior to the other, that doesn't mean much. If he has more fully the title, that doesn't mean in itself that he has the title simply, in addition. So the ambiguity is not limited to the point which you make....Surely. That is clear. But let us now come to the crucial middle of this passage--"being our only one of all lawful governments". Can you suggest an alternative to the one which was suggested, namely, that a government may be lawful without having its title in the consent of the people.

("our only one" [our only title] "of all lawful governments" [for a lawful government])

What does it mean to say--"our only title to being a lawful government"?

(That is what I had in mind.)

Let us see.

(I think perhaps he means his title, he being the only person to have a proper title, and perhaps is contrasting explicit consent with tacit consent--the old distinction between these two. Then he is saying

that at this particular time King William is the only king around who has one of these explicit. . .)

That is a way in which he could say the King of France also has a legitimate title but not in this . . . That is very good. That is what I thought. But still, here we have, here he doesn't make the distinction. And therefore it seems to me he created an impression. Or you can also say he speaks very popular in the Preface and takes the popular notion. The French king has his title by inheritance. King William has a very poor title from the point of view of inheritance, because he himself didn't have any title....It seems to me that it is his suggestion that there can be a lawful government, the title of which is not the consent of the people. And that is very strange for a book the chief thesis of which is the legitimacy of all governments rests in the consent of the people. If you want to speak ambiguously about consent the Preface to a book devoted to consent is not the best place for it.

- (It seems to me it depends on the ambiguous use of "our". Up above he uses it to refer to the English people and his treatises are written to vindicate a revolution, in a sense, and yet the treatises don't deal just with the people of England. They are a sort of universal doctrine. It seems to me that the "our" here could easily mean man's. You could substitute here "being man's only one of all lawful governments, he has more fully and clearly than any prince in Christendom." In other words, the "our" could mean all men instead of just Englishmen.)

Alright. Then restate the sentence ~~as closely~~, sticking as closely as possible to Locke's text, and insert your interpretation.

- (King William has made good his title in the consent of the people, which, being man's only one of all lawful governments, he has more fully and clearly than any prince in Christendom...In other words, there is only one form of lawful government, and King William has title to this form of lawful government more clearly than any other country.)

I see. But can one say that mankind has a title to lawful government?

- (Well, if we substitute Englishmen for mankind, we say that Englishmen have a lawful title to government.)

That is true. But, at any rate, the sentence is ambiguous. And I would say that to use "our" in two lines, in entirely different meanings, without drawing attention to it is also a very bad procedure, which can be tolerated only if it serves a more serious purpose.

- (He couldn't be referring in "to make good his title in the consent of the people, which, being our only one of all lawful governments", the our still referring to the English people, to lawful governments being more than monarchy, e.g. republics and so on, but the monarchy belonging exclusively to England. Then of all monarchs . . .)

But of all lawful governments. Then you would have to say that the subject of this sentence, "which, being . . ." is the king. And that would be very strange. You see that this is really an awkward construction, and I can only say that Locke here has not taken the precaution to exclude the interpretation

that there could be lawful governments whose title is not in the consent of the people. And that I think stands.

(I was thinking the whole thing could apply to England strictly, and that there could also be other lawful governments in England, but that this is the only one we have....It is conceivable that there would be other lawful governments in England, but this is our only one--in the sense that this is what we have at the moment, and it is lawful.)

I see. In other words, we have two governments in claim--William and James II.

(Or even that there are other forms of lawful government--not simply under James II, but any other form of lawful government.)

I must say I believe this makes it more confused. But let us leave it at that. But you see it is very strange, and it throws some light, I believe, on what he says in grammatically less complicated sentences about the fate of the middle. There he does not use ambiguous sentences; he does it another way. Let us return to the text.

For I imagine that I shall have neither the time nor inclination to repeat my pains and fill up the wanting part of my answer /so the missing part must refer to Sir Robert Filmer/ by tracing Sir Robert again through all the windings and obscurities which are to be met with in the several branches of his wonderful system.

That, of course, has the old fashioned meaning and not the present meaning. Now later on:

For if any one will be at the pains himself, in those parts which are here untouched, to strip Sir Robert's discourses of the flourish of doubtful expressions . . .

In other words, he suggests that those parts of Sir Robert's discourses--but this brings us beyond the Patriarcha. We would have to look at the other works of Filmer and see which parts of the argument have not been touched by Locke. They would probably have been dealt with in this missing part. Still, on the basis of the argument we had with the writer of today's report, I would draw your attention to the following fact. On the bottom of this page he says:

I should not speak so plainly of a gentleman, long since past answering, had not the pulpit, of late years, publicly owned his doctrine and made it the current divinity of the times.

One more reference on the same page (line 19):

. . . to complain of the "drum ecclesiastic."

So, in other words, Locke makes it quite clear that Filmer was preached up by the clergy, by the Tory clergy, and therefore the ecclesiastical background of the whole problem becomes . . ., and perhaps also therefore the missing part and its content, becomes somewhat clearer. Let us now turn to the text. Chapter I, the first sentence:

Slavery is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation, that it is hardly to be conceived that an Englishman, much less a gentleman, should plead for it.

Let us leave it at that. I emphasize the trivial thing, although it cannot be emphasized too often, that that is a value judgment. Even if we disregard the application to Englishmen in particular--in view of the beginning, i.e. "Slavery is so vile and miserable an estate of man"--Locke does not argue that or try to prove it. Why does he not try to prove it, as he would be demanded today?

(I would suspect that in England everyone would consider slavery a vile and miserable--at this time--state of man. Filmer would never have argued for slavery.)

But still, let us stick to this point. If a scientist today would say: "Cancer is a terrible disease", would he be accused of making an unwarranted value judgment? By some fanatics, perhaps. Anyone who knows what it is to be a slave will say it is a vile and miserable estate. Some people might say it is not the worst misfortune which can befall a man. That's a different proposition. But no one would deny the first. So there is no need to get excited about it and he simply in a perfectly rational and sensible manner makes the statement. It would have been extremely easy for Locke as well as any among them who know to substantiate this value judgment. Let us leave it at this brief reminder of something else.

There is a difficult passage in the second paragraph where Locke first says that the book of Filmer is absolute nonsense, and then he excuses himself for these harsh words . . . that he might have taken too much liberty in speaking so freely of a man who is a great champion of absolute power, and so on. And then he says:

I beseech him to make this small allowance for once to one who, even after the reading of Sir Robert's book, cannot but think himself, as the laws allow him, a freeman; and I know no fault it is to do so, unless any one better skilled in the fate of it than I should have it revealed to him that this treatise, which has lain dormant so long, was, when it appeared in the world, to carry, by strength of its arguments, all liberty out of it; and that from thenceforth our author's short model was to be the pattern in the mount and the perfect standard for politics in the future.

You see Locke's book has a fate and Filmer's book has a fate. The fate of Filmer's book was that it was published 27 years or so after it was written. But what does Locke here really say. He has said that Filmer's book is of no worth, unless "any one better skilled in the fate of it / Filmer's book I take it / than I should have it revealed to him that this treatise" of Filmer was to carry by the strength of its arguments all liberty out of the world. What does that mean? Some one will understand it at first reading. Filmer's argument is extremely poor, and that everyone is free to state, unless any one better skilled in the fate of it. By this he cannot possibly refer to the fact that it was buried for 27 years until it was published. What can he mean by that? Let us look at the sequel. Let us assume that there is a relation to this effect:-- that Filmer's treatise, the arguments (~~newly~~ ~~re-~~) of which are very poor, are to carry by the strength of its argument all liberty out of the world. The arguments are poor unless there is a revelation to that effect, that the arguments are strong. Then Locke would have been silent. In other words, if revelation, if the status of a revealed book were claimed for Filmer, then and only then would Locke be It is a strange remark. You see here that he also says "the laws allow him"

and in the next paragraph (page 8) he refers to the laws and he draws the attention of the reader to the fact that Filmer's principles would make questionable every established order. Locke appeals to the laws everywhere and in particular, of course, to the laws of England. He appeals to them against Filmer. The argument today would be this way. Someone would set forth a certain theory and someone would appeal in this country to the United States Constitution. This is, of course, a perfectly legitimate political argument. In the same way Locke appeals to law, English law in the first place and to law in general, in order to criticize Filmer's argument, that is, Filmer's book. Such an argument, i.e. an argument appealing to the law, the constitution, is of course never a theoretical argument proper, but it is always necessarily a political, practical argument. We cannot dwell on every subtlety, and we will now turn to the second chapter (beginning on page 10).

The argument itself is extremely simple, but I limit myself to (certain) (?) passages. He says here (in the middle of the page, where the note 4 is indicated), Filmer tells us that the authority of princes is "unlimited and unlimitable." Now if you look at the note you see that Filmer doesn't say a word that they are unlimitable except in a limited way, namely, by no inferior power of man. To say unlimitable without qualification would mean, of course, also unlimitable by God. Why could this be? What could he mean by that? The term occurs again somewhat later. Why is the kingly or fatherly authority unlimitable even, that is to say, even unlimitable by God?

(It could only be unlimitable if there were no higher authority, if there were no God.)

No. But what could he possibly mean by that?

(If its unlimited wouldn't he prescribe what manner of worship (indistinct) by those who are under his control.)

I see. Every worship of any subject of his would have to go through his approval. Yes, that could be it.

(You could also mean by unlimitable that no one has the right to limit it.)

Sure, that is the same meaning, but the question is that whereas Filmer speaks of no inferior power of man limiting it, Locke simply says unlimitable. Therefore he includes every being. A possible interpretation is this. Part of Filmer's argument is based on natural law, and Filmer contends that the power of the father is by natural law unlimitable (~~should be unlimited~~; ~~Transcribe as note~~). Now if one makes the assumption that the natural law is absolutely unchangeable, even by God, then, of course, the power of the father would be not only in fact unlimited but simply unlimitable. On this premise it would make sense.

In paragraph 8 there is a remarkable passage. You see we have here a number of quotations from Filmer and later on from Bodin through Filmer. Now these quotations are meant to show, to illustrate, Filmer's notion of paternal power. At the end of these quotations you find one sentence, and that is incidentally the central quotation if you count all the quotations together, on page 12, "Kings are above the laws." Now all these statements are meant to illustrate not only Filmer's doctrine but also the atrocious character of Filmer's doctrine. Now what is Locke's view regarding kingly powers and their relation to law. In these early essays (page 119) you find this passage:

Princes in whose power it is to make or remake laws at their will to do everything in favor of their own dominion, are not and cannot be bound either by their own or by other people's positive law.

Are kings above the law according to the treatises of government?—above the positive law. And here, of course, Filmer meant kings are above the positive law.

(No.)

Who makes the laws?

(Well, under certain circumstances they are.)

Which are these circumstances?

(On occasions of public safety, on occasions where the legislature would not be assembled; generally under unusual conditions.)

I understand how you get the impression, but you are wrong. ^{makes} Locke ~~means~~ it quite clear that the people can place the legislature also in the hands of one man, so that the legislator is one man. That he doesn't think is a bright idea, but it is as legitimate as to put it in the hands of an assembly. Now this legislator-king is of course above the laws in the sense that he who can make the laws can also unmake them according to his discretion. The only qualification which Locke makes is that the government, the king or the assembly, must rule by standing laws. But the laws can be changed. The king may always rule by standing laws and not by arbitrary decrees and yet rightly be said to be above the laws in so far as he can change them as he sees fit. So there is nothing . . . I mention it only in passing that this statement, i.e. kings are above the laws, is by no means opposed to Locke's teaching, if it is understood that kings are above the positive laws. We come to that later. The myth regarding Locke I can caricature as follows—the twentieth century interpretation of the American states' constitution; that is what Locke's doctrine is. The American constitution as interpreted by a New Deal Supreme Court. That is said to be Locke's view. That is wrong. Locke had something to do with the United States Constitution as it was originally meant, but it is not identical with that. Locke, as we will find when we come to the second part, is as good an example as any other to point this out.

The main point of this chapter is that Filmer did not, Filmer asserted in a very unclear way that the power of fathers or kings is unlimited. But he didn't give any reason why this fatherly power is necessary, and that is the point he will take up in the sequel (the third chapter) to which we will turn now. Filmer has said that the natural freedom of man cannot be proposed without the denial of the creation of Adam, and Locke disposes of that very quickly by indicating that the lion too was created, and thus for the same reason the lion could be regarded as the ruler of everything. Therefore, mere creation as such does not establish any power of government. Therefore, the question is not creation but appointment, as Filmer also says in some passages. Do you have a question?

(I was just going to ask you what about the fact that the lion was not created in the image of God while man was created in the image of God.)

That's a good point. But would even that give Adam a right to rule all men, the mere fact that Adam was created in the image of God? Would this make him the ruler of all other beings created in the image of God? There would have to be

some appointment as Filmer and Locke call it.

(Well it could be an appointment, by Filmer's argument, by parenthood. In other words, if God had created Adam to become a father and in becoming a father he would care for the children.)

Then you would still have to prove that the paternal right which Adam had included the right to rule his whole posterity in every respect even after he has grown to adulthood and so on. The mere creation wouldn't do it. The mere fact that Adam was created, or even created as the first man, would not give him such rights. I think we must turn to this passage. Now what does Locke say here. God's appointment could mean three things (page 17):

"... whatsoever providence orders, or the law of nature directs, or positive revelation declares, may be said to be by God's appointment."

And Locke's conclusion is that God's appointment here could only mean God's revealed positive grant made to Adam (Gen. i. 28). Everything turns, therefore, on this biblical passage.

And God blessed them and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.

From this passage, according to Locke, Filmer drew the conclusion that Adam is the sole proprietor, and therefore the sole monarch, of all his posterity, with the implication that after his death the oldest heir would always be the sole proprietor and the sole monarch. Locke argues with some sense that nothing of the kind is said in these words. But we have to consider the details. Or is there any difficulty in Locke's argument up to this point--that Genesis i. 28 does not justify Filmer's claim. Well, let us turn to the next chapter, which is the detailed discussion of that verse, "Of Adam's Title to Sovereignty by Donation" (page 21). On page 22 he quotes the verse. Let us first read paragraph 24 to see what Locke's general contention regarding the verse is.

That by this grant (Gen. i. 28) God gave no immediate power to Adam over men, over his children--over those of his own species; and so he was not made ruler or "monarch" by this charter.

The charter speaks only of a rule of Adam or of man over irrational animals obviously.

That by this grant God gave him not private dominion over the inferior creatures but right in common with all mankind, so neither was he monarch upon the account of the property here given him.

This point would be crucially important--that divine appointment was of common ownership of the earth by all men, not of private property as such. But we will come to this later. Now Locke establishes first the principle "Since all positive grants convey no more than the express words they are made it will carry." Now what do the express words of this verse mean according to Locke? He says this at the top of page 24. The Hebrew word that is here translated "that moves upon the earth" can also have the meaning "which creeps upon the earth" and he says the passage can be construed to mean that God

gave Adam rule over the fish of the sea, the fowl of the air and over all reptiles, leaving out cattle as he says on line 3 of page 24. That is a possible interpretation. But of course Locke rejects it because the biblical author does not use the full enumeration all the time. But still Locke had something in mind by suggesting this strange interpretation that Adam became the ruler of all lions and eagles but not of sheep and oxen. And that is a point of some great importance. One point was referred to in today's report. What is the difference between the charter given to Noah and the charter given to Adam?

(Well, after Noah man was to be permitted to have private property as we know it, to do what you want with the creatures. Before this man couldn't do what he wanted; he was restricted by God. You could not say "I own something.")

Yes, but that is not the only point. I was more concerned now with the other side. Now let us see. We have a parallel to that a bit later. On page 31 (middle):

In the next place it is manifest that in this blessing to Noah and his sons property is not only given in clear words, but in a larger extent than it was to Adam.

On the next page he explains that more fully. "Adam with all his sovereignty wanted"--what did he want? He could not even take a kid or lamb out of the flock to satisfy his hunger. In other words, only Noah was permitted to eat oxen and sheep and other beasts. Adam's power over cattle, an important use of which is food, to eat them, was extremely limited. That has very great implications, for example, regarding the question of the state of nature. The state of nature is defined by Locke as a state in which man has all the privileges of the law of nature. One of these privileges is, of course, (a necessary privilege,) the privilege of the right of self preservation, which includes the right to the means of self preservation. And that means, among other things, all salutary food naturally, of which cattle forms a not negligible part. And now, if Adam did not have the right to eat food, he obviously did not live in the state of nature. A state of nature technically, in Locke's technical terms, could have begun at the earliest with the grant to Noah after the flood. So that the difference between state of nature and a non-state of nature has nothing to do with the difference between the state of innocence and the state of the fall. Do you see that? That is one important consequence of that. But he also says later on, where he says that Adam had the right which a shepherd may have; a shepherd can, of course, not take kids and slaughter them as he sees fit. He needs permission. He is not the owner of the sheep because he can't do with them what he wants. Now this has another important implication regarding the Bible. What about lawful slaughtering of animals prior to the fall? Do you remember any examples? Was there any lawful slaughtering of animals?

(The sacrificing in Cain and Abel.)

suggestion:

But that leads to this ~~situation~~. Eating of animals was forbidden; sacrificing was not forbidden. Yes?

(Well, this is a very minor point but surely animals die or are killed in accidents. . .)

Well, there is no evidence. . . According to the Mosaic code they cannot be (law) eaten. But I believe from the statement in Genesis regarding Adam and Noah it would appear that meat shouldn't be eaten under any conditions prior to Noah.

But sacrificing was possible. Now how would this appear in the eyes of a man like Locke?—this fact that men could sacrifice animals lawfully but could not eat them.

(The animals are in effect God's property and not man's.)

You can put it this way, but can it not also be understood that man in his original state was very restricted in his rights. One would have to link up on the basis of an earlier passage in the earlier writings to which I will refer with another great prohibition of eating which occurs at the beginning of the Bible. Do you know?

(The apple.)

Well, the apple is questionable—the fruit of the tree of knowledge. Locke refers to that story of Prometheus and Zeus in one of his early writings (page 220-21 of this edition). Consider this in the whole context I mentioned before, i.e. the question of providence as the basis of the traditional natural law teaching which is questioned by Locke.

There are other strange remarks about the Bible which we find here. Let me see. The main point, of course, which Locke makes is obvious. The grant was made not to Adam in particular, clearly, but to two, to them, hence to Adam and Eve. And here there is a difficulty. What does he say about that in an earlier passage? We find a description of the creation of man, and then man is addressed in the plural. What can this mean? Locke says it must mean that Eve was also meant. But the creation of Eve is told of in the second chapter in an entirely different context. And what Locke is trying to do, following some theologians which he quotes, is to harmonize chapter one where no creation of Eve out of Adam is mentioned with the second chapter where the creation of Eve out of Adam's rib is mentioned. Now let me see. There are a few passages on page 30. He makes this remark in the first paragraph:

It is probable, I confess, that Noah should have the same title, the same property and dominion after the Flood that Adam had before it; . . .

(?) Why is this so? Why is it probable? That creates a certain difficulty. The statement is, of course, ambiguous. If you say Adam before the Flood, that could very well, (since Adam lived at the time of the patriarchs,) mean the latter part of his life after the Fall. But, of course, if we take Adam as a whole, it is by no means probable that the status of Noah should be the same as that of Adam, i.e. prior to the fall. In other words, the question of the Fall comes up, to which we find other references later. I mentioned already that the full rights of self preservation, which includes the right to food, are given only after the flood, i.e. after the fall. But let us see the more important remarks in the next chapter on this subject.

First there is this sentence from Genesis iii. 26: "And thy desire shall be to thy husband, and he shall rule over thee." From this Filmer infers that Eve is to be subject, politically subject, to Adam. What is Locke's argument about that? Locke simply says that this is a prophecy of what will happen; it is not a giving of a right to anybody. And then he argues further that the context speaks against any grant of right because this occurs after the fall, where God would be least willing to grant Adam prerogatives and privileges. That is on page 44. But the main point which Locke makes is this. The passage doesn't apply to Adam but to all men, and therefore it means the subjugation

of the wives to the husbands and not of all men, of all contemporaries, to Adam. At the end of paragraph 45, let us read that passage.

It will perhaps be answered again in favour of our author that these words are not spoken personally to Adam, but in him, as their representative, to all mankind--this being a curse upon mankind because of the Fall.

God, I believe, speaks differently from men, because he speaks with more truth, more certainty; but when he vouchsafes to speak to them, I do not think he speaks differently from them in crossing the rules of language in use amongst them; this would not be to condescend to their capacities, when he humbles himself to speak to them, but to lose his design in speaking what, thus spoken, they could not understand. And yet thus must we think of God, if the interpretations of Scripture necessary to maintain our author's doctrine must be received for good; for by the ordinary rules of language, it will be very hard to understand what God says, if what He speaks here, in the singular number to Adam, must be understood to be spoken to all mankind; and what He says in the plural number (Gen. i. 26 and 28) . . .

Now what does it mean regarding the issue more important than the Locke criticism of Filmer? The passage here is stated to Adam. Is this what he means, that this verse is meant or stated only to Adam? That's Locke's interpretation.

(The consequences of the Fall don't descend to all men.)

That's it. It amounts to a denial of the Fall. That is what I meant. Now that is confirmed by the sequel to some extent, because there he speaks of the curse on Eve, namely, that "I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children," that this does not exclude the right of Eve, of women, to circumvent the Fall by using means which make childbirth easy. The curse is only limited to Eve, in other words, and not on women, on Eve's daughters. Now let us take on more passages. He discusses here only one part of the curse, the curse on Eve. What about the curse on Adam? What is the burden of that curse? It is quoted on page 36: "In the sweat of thy face shalt thou eat thy bread." Well? Is there anything in Locke's own doctrine which reminds us of that verse?

(Aquisitiveness)

No, not necessarily. Some acquire without sweating.

(The labor theory of value.)

Labor. The title to property is labor. Therefore, the sweat of thy face shalt thou eat thy bread. But what does Locke say later on when he pursued the argument of property. For example, if you take a squire in England and a well-to-do man who eats three square meals a day, then you say of him he eats his bread in the sweat of his face. I mean, he may have been hunting . . . Is he not the lawful owner of his property according to Locke? Is he or is he not.

(Yes.)

He is, but he has not acquired it by labor. How does Locke state this in general theoretical terms.

(Well, there is the right of inheritance--a man wants to look after his family. And there is a natural right to provide and sons to inherit, and when society is formed property becomes fixed . . .)

In other words, labor ceases to be not only the only title but any title to property once civil society is established. After the establishment of civil society, all titles to property are positive titles. You can labor. For example, you can go and dig, as a digger say. You work very hard. Does that give you a title to that land, that part, in which you do the digging? Of course not. Let us now state it in typical terms. Just as a woman can circumvent the pangs of childbirth by proper medical methods, man can circumvent the curse of labor by the proper kind of organization. It is exactly the same thing. It is strange that the doctrine of property is in the fifth chapter of the Second Treatise and this parallel case of the other part of the curse is in the fifth chapter of the First Treatise. I think that is the most important point which occurs here. Needless to say, the refutation of Filmer must always be read and considered and even on its own terms there may be quite a few interesting points which I, for example, have overlooked. But one must not overlook the fact that Locke is killing two birds with one stone in his attack on Filmer. He does something more. The real relation of Locke's political doctrine to the Biblical doctrine appears I believe more clearly from the First Treatise than from anything else, especially if in reading the First Treatise one has already an inkling, or more than an inkling, of the teaching of the Second Treatise. The labor theory of value is, of course, very important theoretically in Locke but practically it is superceded. The theory that labor is the only legitimate title to property is completely superceded in civil society. The labor theory of value is, of course, never superceded. All value originates in labor, but value is one thing and property is another thing. You may produce labor without acquiring any property for example. Or is this not intelligible? The (socialist) consequence from Locke is drawn against what Locke understood by it. It may be theoretically superior to Locke, that I do not go into now. But in itself the meaning of chapter five is exactly this: only if labor ceases to be the title to property can you get a civilized society. There must be people whose property is not acquired by their labor. Well, we come to that chapter and we will discuss it in more detail. Here I note only this connection with the biblical verse. The case it seems to me is exactly parallel to the case of the curse on Eve, a curse which is limited by Locke to Adam and Eve as these two persons. The later generations are (freed from it.) At the end of the verses speaking of Adam and Eve leaving paradise, "The world was all before them". In other words it was not an expulsion from paradise as it was traditionally understood. The world was all before them. That is a similar understanding as Locke has.

This question of the state of nature and the Bible will come up more and more frequently. But I can give this warning now. The distinction between the state of innocence and the state of Fall, or the state of pure nature and corrupted nature, has nothing to do with the difference between the state of nature and the state of civil society. That was an overstatement. You cannot understand the distinction between the state of nature and the state of civil society if you do not see it as a deliberate correction of the traditional Christian notion of the distinction between the state of innocence and the state of the Fall. But there will be another opportunity to explain that.

(End of lecture)

... what occurred there, on the face of it, seems to be a completely obsolete subject. Therefore, we must always think of the very practical, very urgent issue which is at stake in this book, even in the First Treatise of Locke. In discussing the essays, the early essays of Locke on the law of nature, we have become aware of two radically different understandings of natural law: the traditional one and the one which we find partly in Locke, more simply in Hobbes. And to begin with it seems to be an entirely uninteresting, purely historical question whether Locke is a bit more Hobbeian, or maybe even thoroughly Hobbeian, or whether he is more in agreement with the tradition. In a sense it is a purely historical and antiquarian question. But what is this issue of the two forms in which natural law was understood. The modern natural law teaching, I would say, is one form and perhaps the classic form of what one may call the modern project altogether. This notion, which emerged early in the 16th century, the so-called ~~Middle Ages~~, and which has then gained power from generation to generation and has remained identically the same in spite of all the important more superficial changes. And it was this notion which was indicated by such terms "science for the sake of power," "to relieve man's estate," "the conquest of nature," "the raising of the standard of living," "the establishment of a universal society, a universal state, a universal league of nations, a universal society which is no longer linked to a state." All these various forms have something fundamentally in common, the attempt ~~to~~ man to establish a heaven on earth by his own power and to do it in such a way that the perpetuity and solidity of this society would be guaranteed forever. All the particular notions which were mentioned in ~~this~~ age, in Descartes and other writers, even some prospect that they could get rid of death itself. Man would be complete master of his fate. This was the common formula of this ~~whole~~ effort. And it would, of course, be very silly to think that this is dead. Our social science says, of course, that it can only give means for this end among other ends. But it is in no way linked to that; it can also be linked to other ends. But I think a closer study would show that this older notion, which is very visible in communism of course, but which also played a great and decisive role in the modern democratic development, is ^{not} completely absent from present day social science. As far as I remember a close study of Lasswell, for example, would show that a similar notion of the establishment of a paradise on earth, (in Lasswell's case psychoanalysts happen to be much more important than the other things) and the newer gimmicks do not constitute an essential difference. The main vision is the same. And one can say that all earlier thought of all civilizations, or cultures, or nations differs radically from this modern project because all these other thoughts implied tacitly the denial of the possibility of such a control of man's fate by man. That can be expressed in very different ways but I think that was common to man in all former ages. Now the modern natural law doctrine, which as such was developed by Hobbes relatively late, around 1640 perhaps, is however one classic form of this thought. The notion that human life begins with a state of nature, which is a state of absolute poverty, war and misery in every respect. The only guide that man has is each man's natural right to self-preservation. Guided by that men can gradually learn to devise means for his self-preservation. --And not only for his mere self-preservation but also for his comfortable self-preservation. --And he develops along these lines a system of a peaceable order in which the government has but two functions: (a) to establish peace and (b) to make life as comfortable as possible for all society. Of course in the Hobbeian state that was still very much limited. In the first place you had to have a very strong government which means a certain amount of unpleasantness which cannot be taken away and, secondly, the possibility of war was admitted as something inevitable. To that

extent, of course, that is a somewhat old-fashioned version. But the fundamental point, the starting point the original situation of man as one of complete exposedness, forsakenness, that owes all good things which he has entirely to his own efforts. At the beginning there are only rights; duties come in only as needed for the safeguarding of these rights. ~~And these things~~ are developed very ~~clearly~~ to Hobbes.

Now in the case of Locke these are very complicated, because Locke was a very cautious man as we have seen. Therefore he presents a combination of a Hobbesian natural right doctrine with a traditional version. And all the difficulties of interpretation are due to this strange ~~type of~~ mixture which he (constructs). But this seemingly muddle-headed thing which Locke draws up, muddle-headed compared to the clear lines of Hobbes' doctrine is the main reason for the very great success of Locke. Whatever Locke himself may have thought, this prudent, judicious mixture which he presented appealed to many people who were merely repelled by Hobbes. Hobbes' main conclusion was, or at least most visible, practical conclusion was, very strong government and that meant absolute monarchy. That was detested very much in his homeland after their dealings with James II. Locke showed that what one really needs for the sake of self-preservation is indeed a strong government, but this strong government does not have to be an absolute monarchy. Something like the British constitutional monarchy, you could almost call it a republic, is much better for this purpose. So Locke had an immediate appeal to the more general part of the population (Frank notes: should be generous), and since generous is a synonym of liberal (as not everyone will easily remember today) with the liberal tradition. Those who loved freedom and so on—generous people. Today this is a bit changed as some of you may know. So, at any rate, Locke had a success which I believe is unique... Rousseau had an enormous effect. But what is the practical influence of Rousseau? That is very limited; you can trace it among the Jacobins in the French Revolution, among certain anarchists and so on. But that a great political system lasting for centuries should somehow feel that it is authentically interpreted by a philosopher, i.e. Locke. And ~~consider~~ the enormous influence which he had in the formative period in this country. These are well known facts. In order to understand that however, it is necessary that we make a distinction between the broad practical proposals and the apparent principles of Locke, which everyone can easily find, and Locke's own thought... The principles of Locke I believe, and I think it will become clearer the more we go on, are not identical with those he set forth all the time. By virtue of the fact that Locke is really much more "modern" than he appears at first sight his influence has lasted long beyond the time when the traditional natural law teaching still was very powerful. Let me restate that sentence. When Locke wrote, that is, in the seventeenth century, the traditional notion of natural law was still very powerful, and it appealed to something which most contemporaries would have granted. A hundred years later this natural law teaching had no longer this powerful influence in the Protestant countries. But since in Locke there was always this other element, that modern element that was really the principle on which he argued, his influence retained its strength. In spite of the weakening of the traditional natural law notion to which he had also appealed. I hope this remedies the defect of the first sentence. Therefore, for all these criticisms it is really necessary to read Locke with precision to find out what precisely the principles are on which his doctrine is built and not merely those principles to which he appeals... Let me try to make it a bit clearer. Here you have the broad practical teaching, the famous principles, e.g. No Taxation Without Representation, and so on. This is apparently based

on these fairly traditional principles. The true reasoning is, however, let us say over here. (Mr. S illustrates on board). On the one hand, this reasoning is absolutely spurious, but it is stated in a rhetorically impressive way--from the traditional principles to the practical teaching. The strict teaching starts from over here, that is the true basis of what he thought. The problem of understanding Locke consists precisely in tracing his practical proposals, which everyone can easily see, to the principles which truly justify them as distinguished from the principles which are appealed to in a rhetorical and popular manner. Is this clear or is there any difficulty which could be remedied without further reading?

(Are any set of principles which have been isolated from Locke, that is, can we take these principles out of Locke and say here are the principles of John Locke?)

I don't understand . . . Locke had some principles from which he deduced his doctrine. You don't question that.

(No, I don't. I wonder about the problem of isolating them. Is there a period in his work in which you can take them out and say these are the principles . . .)

But he appeals to certain principles, doesn't he? He does this explicitly. Now one has simply to look up whether these principles are truly the basis of the ~~classical~~ conclusions which he draws from that. And if this does not work out, well, maybe Locke was just a bad reasoner. But it is also a possibility that he was a good reasoner and that there are other principles present in his work from which the doctrine follows in a perfectly necessary manner. That is simply a question of empirical procedure. We have to look.

(Did he appeal to these principles on a theoretical sense or merely on an unconscious or common-sense sense.)

Well, if they were unconscious, then we wouldn't know anything about them. But in speaking about common-sensical, it is hard to see what you mean. For example, I would call it a common-sense appeal if it was directed to the British Constitution, the principle of the British Constitution. That would be common-sense appeal. Then it is assumed that everyone knows more or less what the principles of the British Constitution are, although that is of course not so simple. But Locke doesn't appeal to the British Constitution; he appeals to natural law. Those are his principles, and one has to see what he teaches about natural law. Now I have indicated on a former occasion, and for that matter the whole discussion on the essays on the law of nature led to this point--that Locke had in front of him this traditional natural law teaching, and that he undermined it at every point. He contradicts himself flagrantly all the time regarding that traditional natural law teaching. The question arises: does he not have other principles of natural law different from those of the Thomistic tradition. And I think we can discern such principles. One principle was indicated in today's report, namely, the absolute importance of self-preservation. I think it is possible to do that. I quoted a passage from the Essay concerning human understanding in an earlier meeting where he speaks of the possibility of demonstrating morality or the natural law and in which he does this in two entirely different ways. The one is theological, and the other starts from such principles as where there is no injustice there is no property or Where there is government there cannot be absolute liberty. No theological foundation is in any way taken into consideration, and the emphasis is entirely on the two phenomena of property

and government. And this latter part can be elaborated very well from Locke's teaching, and put together. It requires some careful study. Now, if there is nothing else let us turn to today's report.

I do not know whether you connected these two points, but you said Locke somewhat mistakes the case by saying that Filmer's argument is based entirely on scripture. Locke made Filmer much more biblicist (if I may say so) than Filmer is?

(Yes.)

You also quoted this crucial passage in which Locke says reason is man's only star and compass. This is very definite, and this can be confirmed by other passages. In other words, Locke would admittedly have been a radical rationalist. Did you connect these two or try to connect them?

(I meant there to be some sort of connection, although I didn't make it very apparent, when I said in the end that when Locke propounded a new basis of government, it did not appear very revolutionary, because he appealed to the authority of God in both cases. Filmer appealed to the authority of God through scripture and Locke through reason.)

Well, but the distinction . . . I'm sorry I have to bother you with these things because they are so remote from social science. In the tradition people made a distinction between two kinds of doctrine of theology. One was called natural and the other was called revealed theology. Now a man could believe in God and speak of God without accepting revelation. So when Locke is a radical rationalist, that has nothing to do with the fact that he speaks of God. It could be a purely natural theology. . . No, that has nothing to do with it.

(I thought it did because Locke seemed to be maintaining in this way that he was appealing to theology, to natural theology as opposed to . . .)

But still, the Bible as Bible gives you revealed theology. . . When Locke says Filmer is a biblicist, he means Filmer's teaching is absolutely based on the Bible and does not refer to rational (indistinct). Locke is indeed a radical rationalist. And therefore he may also prefer a rational theology. (But only to a rational one.) Is that clear?

(It seems to be a clear distinction now. The fact is that Locke, of course, refers to a revealed theology, but not as authoritative.)

But to the extent to which Locke is a radical rationalist, there is no way of his accepting revelation. Or is there? Ah ha, that is the root of it (Mr. S looks at a reference)

(I believe in the section he explicitly raises the question . . .)

Well, in the 18th century there existed something which was called enlightened Christianity, and some one, who was a good theologian, said about it: "This enlightened Christianity never knows where ^{he} is enlightened and where ^{he} is Christian." You know there are all kinds of compromises. In one sense you are quite right. There were people who said revelation teaches nothing except what reason also teaches. The teaching of the Bible is identical with the teaching of reason. Locke himself seems to have said this in his Reasonableness of Christianity. But there is one point, one simple reasoning, which makes doubtful the idea of such a simple equation. Because if revelation teaches nothing except what reason teaches, why is revelation necessary?

(Perhaps revelation can be necessary for other than political purposes.)

No, no. I'm thinking only of truth now and not of political things. But if revelation teaches nothing but what reason tells you, what is the use of revelation?

(Unless men are not sufficiently reasonable.)

Alright, then it means it is to have a provisional function for children. That is true. But it would be replaced in the age of enlightenment. Revelation as revelation would no longer be necessary. And therefore a thinking man never has to rely on it. The thinking man either rejected revelation or made a distinction between revealed theology and natural theology...Of course Locke could have made this by an accident, i.e. because he was muddle-headed, but I believe that is not true. We will come to that later.

(On the other hand, he might have not wanted to make it appear that he was absolutely rejecting revelation.)

Sure, that is without any question. That belongs to the surface. That is supposed to be an act of prudence; it does not belong to the theory itself. So that is one point. Now the other you said something about self-preservation, a point I found extremely interesting if you are right. Self-preservation is the over-riding thing only in man and not in the other animals. Which are the passages? I had never thought of that, but you may be right. Do you mean paragraph 86.

(In paragraph 88 he says that it is "the strongest desire planted in men")

I see. He speaks here indeed only of men. That is very interesting if it is true.

(And in paragraph 56 (page 43-44) he refers to God on page 44, saying "He has in all the parts of Creation taken a peculiar care to propagate and continue the several species of creatures, and makes the individuals act so strongly to this end that they sometimes neglect their own private good for it, and seem to forget that general rule which nature teaches all things--of self-preservation--and the preservation of their young, as the strongest principle in them [that is, stronger than self-preservation] overrules . . .")

But the question is whether here he does not include man. That is the question.

(That is a possibility, however, since he is specifically vague in wanting (?) to put it that way, and this follows immediately on the example of wild beasts . . .

. . . to decide such a very great question in a moment, but it is a very interesting suggestion, a very interesting suggestion. And one can make sense of it. Well, the general thesis which you find in everything is self-preservation is characteristic of all living beings, and it is the fundamental desire, the fundamental inclination of all human beings. That you find everywhere. Now Locke, of course, says it also, but if you are correct Locke says that in the other animals the desire for self-preservation is somehow subordinate to the desire for the propagation of the species. And only in man does this desire for self-preservation assert itself without any . . . , . . .
Do you see the possibilities which that assertion contains.

(Well, man has one thing which distinguishes him from animals and that is the reason, the reason which almost makes him equal to the angels.)

Maybe, but certainly it would mean that only men can be radically "individuals". The others are all part of a species or what have you. Men can isolate themselves; they can consider their own self-preservation. It is the most important thing. And this may be connected, as you rightly suggest, with the fact that he has reason. This is something which is really worth while, and it would throw new light on this whole problem. In other words, whether self-preservation does not come out in Locke as something peculiarly human, because in the case of the other species it would be weaker or subordinate to the preservation of the species. This should be looked into carefully.

(The principle then remains self-preservation in both cases, but in the first case self-preservation in the case of the beasts refers to the species, whereas in the case of the human being it does not refer to the species. Self-preservation remains the fundamental principle.)

Well, but your formulation also conceals ^{the} ~~a~~ problem, does it not?

(The implication for man then is the radical destruction of the species.)

Or at least it is subordinated. Concern with the species is absolutely subordinated to the concern of the individual for himself. But I am not sure whether you are right. But it is certainly an interesting question which you raise.

(Locke seems to say as much later on, e.g. page 67) (line 16 from top)

But he speaks here only of men. Sure. But that of course does not necessarily mean that this is true only of men. That is my objection. One would have to put together all the relevant passages.

(If that weren't the case here, then you would have to find some way to reconcile the contradiction. In section 88 he says that preservation of the individual has precedence over preservation of the species, and then in the other case, he says . . .)

Well, I am aware of these contradictions and I always had another solution, but your solution strikes me as preferable if it can be proved, namely, that this first statement was only a provisional statement and was revised. In other words, the statement in which the preservation of the species was said to be the most important principle is later on revised. In other words, that Locke takes his time until he discloses the absolutely fundamental character of self-preservation. That was the way in which I had understood it before too, but your solution seems to be more interesting, if true.

(At the bottom of page 45 he says that the main intention of nature "willeth the increase of mankind and the continuation of the species in the highest perfection." Then, if what you have been saying is true, wouldn't this imply something even more radical than the individuation of man, that is, his distinction from nature, and in some sense his distinction from his own nature—if it is a law of nature and his own nature that the species be preserved.)

This passage is difficult for other reasons, but I do not believe that it creates here a difficulty because here he is speaking of the main intention of nature regarding the propagation of the species. In other words, he distinguishes here normal (how do they call it now) sexual practices from abnormal ones, a limited question. I believe that does not decide the broader issue.

(On the other hand, we may misinterpret Locke here, because after all why

do men go out and fight wars? Now this does not appeal to anything of self-preservation, i.e. to go out on the battlefield and kill himself. But on the other hand, it serves to assure that the young are preserved from being mistreated in that way.)

That would be no difficulty because Hobbes met the same thing. Self-preservation is the fundamental desire. It is perfectly compatible with endangering one's life. That is an easy thing. We come to that question in the Second Treatise where Locke will discuss it. That has nothing to do with that. I mean, in this simple way Locke cannot be refuted by empirical evidence. You know, there are always people who commit suicide. That in itself would not be relevant. The question we came across here as the result of the paper is whether Locke did not limit self-preservation in its radicalness only to man. (Trans. note-- should be radicalest) And that is a very interesting suggestion.

(I would say that makes him the exact opposite of Aquinas and Aristotle. Man is a social animal. Locke appears to be saying man is less social than any other animal.)

In a way, yes. But in Aristotle there is also an admission that there is something in man which transcends the polis. That would not be adequate in itself. It is certainly worth while to go into that and perhaps whoever is reading the paper next time will find it useful to watch this problem a bit.

(I believe Locke sometimes speaks of the public good and he seems to equate individual rights (indistinct) and therefore this would almost mean from what we are saying today that self-preservation is equivalent to the public good or the common good.)

In a way, yes, but I can state it to you very simply. That is really the Hobbesian thing. Self-preservation is not possible, generally speaking, if there is no peace domestically, if there is war of everybody against everybody. Therefore, the moral conditions of peace--to be nice to man, to be gentle-- peace is the content of the natural law. Now peace is, of course, essentially a public good. You cannot have peace if your neighbors don't have peace. There are always two people needed at least in order to have peace. So peace is essentially a public good. And if there is an essential connection between self-preservation, the most fundamental need, and peace, an essentially public good . . . (several words indistinct).

There were a few more points. Why do you think Locke was unfair to Filmer regarding usurpation?

(Locke said that Filmer had this radical, strange and surprising doctrine that he has the legal right to authority who can capture (catch?) it. He based it on one single passage of Filmer.)

Well, I do not know whether Locke bases it all on a single passage, whether there are not other passages, but even if there were only a single passage would this not be a fatal admission, an admission which he is compelled to make because he must account for existing governments and must protect himself against criticisms that he is subverting all governments in the world. How do you know that the present Queen Elizabeth is the direct heir to Adam. How can you prove that? Otherwise you must suspend your loyalty in England until you have found out, and you will never find out. So I think there Locke has got a strong point.

(Yes, but this is not quite the issue of usurpation that he criticizes

here because Locke's criticism of what Filmer says (page 62), paraphrasing Filmer's doctrine: "... which in plain English is to say that regal and supreme power is properly and truly his who can by any means seize upon it; and if this be to be properly a king, I wonder how he came to think of, or where he will find, an usurper." Because Filmer had maintained the usurper takes over the claim of inheritance from Adam. When he refers (indistinct). The usurper has a different claim than Locke criticizes in this case, because what Filmer has claimed here is that a person has the authority of government simply by having supreme authority, not by having claimed the descent, rightly or wrongly, from Adam.)

But if the only title to government is descent from Adam in the oldest line, then no other title can be valid of course. Even usurpation can't stand against that.

(The usurper is exactly the person who Filmer is talking about here. But the fact is . . .)

(End of Tape)

... fact that every government must have Adamitic, that is, full power; that is one thing. But in addition it must be derivative in a straight line of descent from Adam. That is incompatible. I think Locke knew of this and talks common sense. A few years ago a student read a paper in my Locke seminar in which he went much beyond you and presented Filmer as a man of supreme political wisdom. You abstained wisely from that. That is a kind of romanticism because Filmer has had such a poor reputation for some centuries and ~~yet there are~~ some points which are not bad. But his whole doctrine, (that is something else again.) (?) The only problem is why did Locke do that? Why did he take the trouble to follow this argument point by point, an argument which was not worth his effort. And I explained the last time (as you partly confirmed this time) that in criticizing Filmer Locke is really criticizing the biblical authority as such. That he somehow manages to identify . . .

(But it takes a little bit of juggling to do it.)

Yes, but I think we will come to that point. We begin now with Chapter 6 (paragraph 50, page 39) "Of Adam's Title to Sovereignty by Fatherhood." Filmer had said the father has the natural right of dominion over his children. No child is born free. But Adam was not begotten. Hence only Adam was ever free. All other men are subject to Adam or to his rightful heirs. To which Locke replies, the natural right of a father is supposed by Filmer. He does not give any clear evident reason for it. Let us read the conclusion of the first paragraph, the last sentence.

And indeed the act of begetting being that which makes a man a father, his right of a father over his children can naturally arise from nothing else.

That should be crucial for the further argument. The right of the father is derivative only from the act of begetting. That is Filmer's thesis, based on a quotation from Grotius. And Locke does not examine this here, as you see, ~~or even~~ in the sequel. Instead he raises the question of how far the right of the father extends. According to Filmer it is absolute power of life and death. Filmer does not give any reasons, but others do. In the next paragraph (52) Locke examines the reasons why fathers acquire power of life and death over

their children by the act of begetting them. Now what is the reason. The reason is that the life that the child has was given to him by his father. That life is his father's; it is a gift, he gives it to him. The father can take it away. That was of course not Filmer's reasoning, but (as Locke makes clear) it is implied by Filmer. Now how does Locke argue against that? Well, common-sensically. Think of other gifts. If you give something to someone, you are not entitled to take it back. This is the first point. But the other point, which is more important, the father does not give life to the child for the father . . . Why does the father not give life to the child? That is a very remarkable argument. Why does the father by begetting the child not give life to the child?

(He doesn't know what it is.)

He doesn't know what life is. The father as father is not an anatomist and physiologist. He doesn't know anything of what he is really doing. He cannot make a living child. Only if man could make a child, and not merely beget it, would he have a right to unmake it. What is he driving at? What does that mean. Let me state it generally. Must he who gives a thing have made it? I suppose you all have made gifts of things which you could never make, e.g. a watch. Most of us can't make a watch, and yet we give it. What is he driving at. Does this question remind you of something, of a broader problem? Now giving life means making, creating. Let us apply the question to the question of God. God made man. God is our maker as Locke quotes here in paragraph 53. Hence it would follow, since God has made man, he can unmake man as he pleases. That is the issue which is here implied. Now what do you see here? Let us read at the bottom of page 42.

He that could do this [namely, make a living creature] might indeed have some pretence to destroy his own workmanship.

Now it is God who make living creatures. Does God have some pretence to destroy his own workmanship? Do you see a problem here. Well, there is the question which we came across already in the Essays on the Law of Nature. What about God's omnipotence. God has created the world freely, he has made the world and man freely. Can he equally well unmake them arbitrarily? I think the word pretence is significant. By this Locke here means a *prima facie* case, especially on the basis of certain biblical passages, can be made for this view, i.e. that he who made a thing can unmake it with the same right as he made it. But is this really so? Is this right a true right and not an erroneous supposition?

(Well, this goes back to the problem whether God's omnipotence is limited or not by God's goodness or God's wisdom.)

Yes, it is part of the question. And I think the word pretence is a very strong word to use here. And Locke, I believe, does not recognize that as we can have seen from the early essays. If I understand this correctly, it means this: God, even God, has no right to destroy his work, as distinguished from the Bible teaching that God has made a covenant with Noah not to destroy his work. It is a covenant, which means that being free to do it is due to his covenant. What Locke is saying is that it is not due to a mere free will, i.e. the covenant, but to his nature. It is impossible for him to do it. In other words, I believe we must consider that the problem, the theological problem, is here always present in this section.

In the next paragraph (54) Locke examines the right acquired by begetting.

In order to make their children, men must not only possess the required skill and power but must also design the begetting by begetting the children (Trans. notes: by should be while) and this happens only very rarely. He speaks here of the voluptuary and other people. The separation of the desire and the function. The function is to propagate the human species, but the desire as such is not necessarily directed toward the function. This distinction between the desire and the function is the basis for the possibility of hedonism, hedonism which tried to find the bearing entirely in terms of pleasure and pain without a consideration of the function in the service of which pain and pleasures arise. Now Locke did make use of this possibility. His teaching is a fundamentally hedonistic teaching as you will see from his Essay concerning human understanding. The father has no thought of giving life, to say nothing that he could not give life because he wouldn't know how to give it. The father has no thought except of his own pleasure. And by this act, which is prompted entirely by his desire for pleasure, he should acquire the right to kill. That is Locke's argument against the view presented by Filmer or Filmer's authorities--that the mere act of begetting gives the father a right of life and death. On the contrary, the Lockean argument leads to the question, which he does not raise here explicitly but will discuss in the Second Treatise, whether begetting as begetting can give any right? Is it not rather the care, the upbringing? We will come to that later on.

In the next paragraph already (55) the emphasis shifts from begetting to nourishing and upbringing; in this context Locke stresses the greater right of the mother. If we were to take our guidance entirely by nature and by natural law, the real right over the child would belong to the mother and to the father only secondarily by virtue of a grant on the part of the mother. That is Locke's point. So a natural right of the father does not strictly speaking exist. Locke does not elaborate this here. Do you know of anyone who said this before Locke?

(Hobbes.)

Yes, and that is a very important point of agreement. The mother and not the father... In the center of paragraph (55) Locke denies that the superiority of the male has any scriptural basis.

Now in the next paragraph (56) he discusses the right to expose and to sell children. This right is based on the practice of mankind as distinguished from the dictates of nature. Reason as well as revelation forbids this abominable practice. The strongest principle is that of perpetuation of the race. On the other hand, you see in the same context (page 43 bottom) "Doth God forbid us under the severest penalty--that of death--to take away the life of any man, a stranger, and upon provocation?" What is the implication of the fact that the penalty of death is the severest penalty? What light does this throw on our nature and our natural inclinations and their order? Why is the penalty of death the severest penalty?

(Because the strongest tendency is toward self-preservation.)

In other words, the good taken away, the good which men are deprived of by that punishment, (every punishment means, as you have learned from Mr. Lasswell, a deprivation) that severest penalty is by implication supposed to be the most important good, that is to say, life. But if life is the greatest good, then the desire for self-preservation must be the most powerful and most important inclination. That does not . . . because he

is speaking here also of men, man and not of other animals.

Now let us see. This passage which follows in the sequel (bottom of page 44), "reason, which is his [man's] only star and compass" is a perfectly clear, I think, admission of the fact that Locke did not admit revelation. At least he did not admit a revealed teaching which had an excess beyond reason. That can be proved by this statement. Whether he admitted any revealed teaching has to be investigated.

(I was interested by the fact that that whole sentence, starting "Nor can it be otherwise . . ." is a very poetic sort of sentence. This is rather rare in Locke.)

Very rare. Which do you mean?

(The second sentence in paragraph 58: "Nor can it be otherwise in a creature whose thoughts are more than the sands and wider than the ocean, where fancy and passion must needs run him into strange courses . . .")

Yes, that is true. He rarely uses that language except in quotations. I cannot immediately exclude that these are not quoted expressions. One must be careful. Still, that he embodies them is characteristic. One must be very careful in these passages. You do not necessarily know that these are Locke's own words. People did not always add this obligatory quotation mark, especially if they were very well known phrases. But still it does not do away with the fact that it is striking in Locke's very pedestrian style.

(?) In paragraph 59 the model of the relation of parents to children are the irrational animals. They behave sensibly, they don't sell and expose their children or kill them. Very well. But what (is the purpose) of that? Is the model of natural law regarding parent-children relations is supplied by irrational animals, what follows from that?

(Reason can't discover natural law apparently.)

Why not?

(Well, if the basis for the natural law teaching on a certain point is carried out by irrational animals, whereas creatures of reason seem to contradict it. . .)

I see. You link it up with what was pointed out in today's report. Yes. In this way it makes sense. In other words, this being a member of a species is somehow weakened and perhaps destroyed by the presence of reason. Yes, in the complete context that makes sense, but I was thinking of amore obvious problem. What is the relation of the animal father and the animal mother? Are they married?

(Non-contractually.)

Are they married? They are not married even if they happen to live in couples. Now that leads to certain consequences. Let us look at paragraph 59, this passage to which one of you referred.

Be it then, as Sir Robert says, that anciently it was usual for men "to sell and castrate their children" (O.p. 155). Let it be, that they exposed them; add to it, if you please--for this is still greater

power--that they begat them for their tables to fat and eat them. If this proves a right to do so, we may, by the same argument, justify adultery, incest, and sodomy, for there are examples of these too, both ancient and modern; sins which I suppose have their principal aggravation from this, that they cross the main intention of nature, which willeth the increase of mankind and the continuation of the species in the highest perfection, and the distinction of families, with the security of the marriage-bed, as necessary thereunto.

Now what is then the status of these things. Adultery and incest are of course actions committed by animals without being adultery and incest. What is the basis for these concepts, e.g. adultery, incest and sodomy, according to Locke? What is the ground of them. The ground is the fact that in the case of man you can speak of adultery and incest whereas you cannot speak of them in the case of brutes? I mean, on the basis of what does Locke speak of adultery? What is the ground of it? Adultery is a sexual relation, I take it, between human beings of different sexes. So is a legal marriage relation. What is underlying the distinction between adultery and non-adultery. There must be a basis for it.

(The legal status of contractual marriage.)

In other words, it would be clearly positive. What does Locke say?

(For the continuation of the species mankind requires . . .)

Alright. In other words, these sexual crimes have a basis in nature because they are incompatible with the increase of mankind and the continuation of the species. Yes, but that is not what Locke says. He doesn't say, "which, I suppose, have their ground in that." He says that have their "principal aggravation" for that. So they are only aggravated by that; they do not have their ground in it. What could the ground be? Let us turn to a later passage (page 89, paragraph 123):

. . . what in nature is the difference betwixt a wife and a concubine?

What in nature means what independently of positive law. The meaning in the context is, there is none. Only by virtue of positive law is there a distinction between a wife and a concubine. Here it is a bit different, but not fundamentally different. These things--adultery, incest and sodomy--have their true ground not in the main intention of nature; they are aggravated by that. They may have their ground in the revealed law... So there is a connection between the previous argument. If the model of the natural law regarding parents and children is supplied by the brutes, that is a necessary consequence, then only the care for children is natural. Whether the parents are married, whether they are brother and sister, and so on is absolutely irrelevant as far as beasts. There is another passage which I can quote to you. Locke quotes here

Opinions and the actions following from them which have a title to toleration, "that men may work or rest as they think fit, that polygamy or divorce are lawful or unlawful" . . .

(1)

Now here, of course, he doesn't give hedonism, but polygamy and so forth, if you take the background of the discussion in the 17th century is one step (short section indistinct) self preservation is the fundamental principle as later on in the book it is, there is of course no reason other (short section indistinct)

... and it is not completely unintelligible. Of course Locke's argument is very careless, but is it not also true that the preponderance of the father within the family was a part of the whole tradition both Greek and Biblical. Surely, when Filmer spoke of political things, of ruling, he forgot about the mother because the mother was not the governor of the family but the father was. I don't say that Locke is not right in saying that *the commandments has no relevance whatever* but it is easily intelligible that people didn't mind the omission of that once they were willing to listen to a monarchistic argument based on the Bible altogether. You see, sometimes blunders are not noted if they fit into one's preconceived desires. Surely, you wouldn't need much intelligence to notice that. Now he gives in the sequel a number of Biblical quotations in which the relations and the rights of the parents are discussed. After having finished these (page 47 middle) he makes the following statement:

Here not the father only, but the father and mother jointly, had power in this case of life and death.

So there is then Biblical evidence for a power, not indeed of the father alone but of father and mother jointly, a power of life and death. That is after all the theme--that there is some paternal power is conceded by everyone, but is it a power of life and death? That is, of course, a crucial part of Filmer's argument. The father must have, or the parents must have power of life and death if the father, i.e. Adam, should have power of life and death over his whole posterity and therefore the present king should have such power. Therefore the question is very much whether the Bible gives power of life and death to the father and mother. Here in one case, what is that case (the last quotation)?

... And it shall come to pass, that when any shall yet prophesy, then his father and his mother that begat him shall say unto him, "Thou shalt not live," and his father and his mother that begat him shall thrust him through when he prophesieth (Zech.xiii.3).

So that refers to prophecy. In the case of prophesying of a religious... we can say father and mother had the power of life and death--the Old Testament. But the question is whether that is sufficient. Now there are altogether nine quotations here, and if we turn to the central one, which is a quotation from Deuteronomy xxi. 18ff.--"If any man have a rebellious son, which will not obey the voice of his father or the voice of his mother, then shall his father and mother lay hold on him and say: 'This out son is stubborn and rebellious, he will not obey our voice.' Now if you look up the context in Deuteronomy, you see the procedure was this: this rebellious son or juvenile delinquent was brought before the community as a whole and was then publicly stoned. In the text of the law there is nothing said about an examination of the claim of the parents, so if you take the letter of the passage it means this. It had to be done publicly, I suppose in order to prevent impossible things, but the judgment that the son deserves death was entirely the father and mother's. Now if the judgment was entirely theirs, then they had power of life and death. What Locke is indicating by these things is that this great paternal power, not power of the father alone but power of the parents, does have a Biblical basis. Needless to say, it also had a Roman base... But in this important point the question of the power of life and death, Filmer had some basis, which won't be of great help to his Adamitic king for other reasons, but this particular element is important. From Locke's point of view such a power is, of course, impossible. The main point he draws is of course the joint rule of father and

mother and not the rule of the father alone.

We cannot possibly read everything, so let us turn to paragraph 67, which is crucial, where he sums up the whole thing. Let us read from the beginning.

And thus we have at last got through all that in our author looks like an argument for that "absolute unlimited sovereignty," described sect. 8, which he supposes in Adam; so that mankind ever since have been all born slaves, without any title to freedom. But if Creation, which gave nothing but a being, made not Adam prince of his posterity; if Adam (Gen. i. 28) was not constituted lord of mankind; nor had a private dominion given him exclusive of his children, but only a right and power over the earth and inferior creatures in common with the children of men; if also (Gen. iii. 16) God gave not any particular power to Adam over his wife and children, but only subjected Eve to Adam as a punishment, or foretold the subjection of the weaker sex in the ordering the common concerns of their families, but gave not thereby to Adam, as to the husband, power of life and death, which necessarily belongs to the magistrate; if fathers by begetting their children acquire no such power over them; and if the command, "Honour thy father and mother," give it not, but only enjoins a duty owing to parents equally, whether subjects or not, and to the mother as well as the father--if all this be so, as I think by what has been said is very evident, then man has a natural freedom, notwithstanding all our author confidently says to the contrary, . . .

Let us stop for one moment. Locke says that if Filmer is wrong all along the line we have established the natural freedom of man. And then he changes from an if clause to a since clause, because it is not sufficient to refute Filmer. . . .

. . . since all that share in the same common nature, faculties, and powers are in nature equal and ought to partake in the same common rights and privileges, till the manifest appointment of God, who is "Lord over all, blessed for ever," can be produced to show any particular person's supremacy, or a man's own consent subjects him to a superior.

Now let us stop here. So, in other words, men are by nature equal, because they all share in the same common natures, faculties and powers. That they may share in these powers to different degrees is simply dismissed, completely disregarded. Locke will take that up in the Second Treatise, these certain passages, but here he simply disregards them. And now he says this natural inequality can be altered by God's appointment, or by man's own consent, by setting up a government to introduce, of course, inequality. (Trans. note: According to the context, 'inequality' above should probably be equality.) The government can command you; it is your superior, and therefore there is an inequality. But there is a strange relation between this first if clause and the since clause. With regard to this since argument, if Filmer had had a point, what would have become of this fact, manifest to reason according to Locke, that men are in nature equal? If the Bible were to teach the opposite, because Filmer's argument is said to be based on the Bible alone, what would happen? If Filmer had had a good argument, what would happen to the natural equality of man? Locke had indicated it to you. The natural equality can be abolished by God's appointment, and it is a mere question of fact whether God

did or did not make such a statement. It is a mere question of fact and not a question of principle. That is very important. I don't know whether you noticed this remark here: "the power of life and death, which necessarily belongs to the magistrate." That means in plain English, to use a Hobbes-Lockean favorite phrase, that prior to civil society in the state of nature there cannot be a power of life and death. What is the teaching of the Second Treatise?

(That anyone who steps on or takes some of your own property, then you may kill him.)

In the state of nature every man has the executive power of the law of nature as he puts it. This executive power includes in the case of sufficiently heinous crimes the power of life and death. This is one of the clear contradictions between the two treatises which has to be considered. Why does Locke make this overstatement here? In order to deny any power of life and death of the parents. Power of life and death is possessed only by the magistrate, by the political authority, and in no way by the domestic authority. Clearly contradictory to the Second Treatise. The situation is this. On the basis of the scriptural argument, which is the basis here ~~in~~ the First Treatise, the power of life and death exists, the power of life and death in the hands of the parents exists. You only have to look up the passages from the Old Testament which he quoted.

Now let us see which other points I can mention. Let us turn to the sequel, to Chapter 7. Now what is the argument of Chapter 7. Filmer says that Adam ruled both by virtue of fatherhood and property. Locke argues that if this is so, Adam's monarchy came to an end by Adam's death. Why? Well, parental power is acquired only by begetting. But Cain did not beget his brother, nor did he beget Eve. Therefore, the power over all men then existing which Adam possessed came to an end. Cain's rule over his brothers can then have been based only on his being the owner of the whole world, on Adam's property. But as ~~he has already indicated~~, Adam had already allocated private spheres of property to his sons. Therefore this argument is not valid. . . .

On page 57 (paragraph 74) we see the first time that Locke begins to question the right acquired by begetting alone.

For if a father by begetting, and no other title, had natural dominion over his children, he that does not beget them cannot have this natural dominion over them; and therefore be it true or false that our author says (O. p. 156) that "every man that is born, by his very birth becomes a subject to him that begets him," this necessarily follows-- . . .

Here he leaves it open for the first time, and in the Second Treatise he will make it perfectly clear that mere begetting cannot give parents any power. Now he speaks here again (paragraph 75) of the two titles of property, and then in paragraph 77 (page 60) he speaks of two distinct independent powers, one arising from fatherhood and the other arising from property. But if we disregard the application for one time, of what does this expression remind--two distinct independent powers--a great issue.

(Well among some of the writers, for example, Hobbes in the kingdom of God and the kingdom of man.)

Well, generally speaking, power temporal and power spiritual could be conceived of. The question I submit to you for your consideration--whether there is not

perhaps in Locke's argument. I find a sentence in the part in which what on the surface is a mere criticism of fatherhood and property is not also a discussion of this other dualism where probably fatherhood would correspond to the spiritual and property to the temporal power. The latter would be easily intelligible because in the teaching of the Second Treatise, as you know, civil or temporal government is defined as the power related to property, to the protection of property. But we cannot go into this here.

Chapter 8 shows this fundamental difficulty in Filmer's argument of the conveyance of Adam's sovereign monarchical power, the difference being that even if Adam had such a sovereign monarchical power that power must be conveyed to later princes, including the princes now, and how can it be conveyed? The difficulty is infinite. Filmer is compelled to admit a right to princely power derivative from usurpation. Now this conclusion shows the absurdity of the whole construction.

Now we should say a few words about Chapter 9. There is very much in this chapter, although I don't know how much we can do with it. In paragraph 81 (page 63 top)

Though it be ever so plain that there ought to be government in the world, nay, should all men be of our author's mind that divine appointment had ordained it to be "monarchical," yet, since men cannot obey anything that cannot command, and ideas of government in the fancy, though ever so perfect, cannot give law nor prescribe rules to the actions of men, it would be of no behoof for the settling of order and establishment of government in its exercise and use amongst men, unless there were a way also taught how to know the person to whom it belonged to have this power and exercise this dominion over others.

Making of law
- legislative is
supreme

The person; if we do not know the person. Men cannot obey anything that cannot command. Locke omits here one possibility. He speaks here only of ideas in the fancy. But what is the common term frequently applied to Locke's doctrine of government? Rule of laws. What about laws? Can laws command? How does the difficulty appear in the case of laws. You don't know how to act in a certain case, say in drawing up your tax declaration. You find out what the law is regarding the matter. That is sufficient. But what is implied in that, in this tax.

(That there is both a human agency to interpret and to enforce the law.)

Yes, but when we speak of a law, we speak of a law passed by Congress. That is understood. Without these human beings, this body of men, this thing would not (be made into) law. So this old story which we know so clearly from Aristotle and Plato, that we ultimately come back as far as the analysis of human affairs as such is concerned to ruling human beings. These ruling human beings may very well be the community as a whole, but still that's the community. But it is so in almost all modern cases that it is not the community as a whole but some man or body of men that does the commanding. It is quite striking to find this passage in Locke and it should not be forgotten by those who speak of the rule of law without any further considerations.

We must not come to the crucial passages to which today's report has already referred. Now what is that? Let us first see in paragraph 85 (page 64 bottom)

In both these rights (meaning the right of fatherhood and the right

of property, there being supposed an exclusion of all other men, it must be upon some reason peculiar to Adam that they must both be founded.

That of his property our author supposes to rise from God's immediate donation (Gen. i. 28), and that of fatherhood from the act of begetting. Now in all inheritance, if the heir succeed not the reason upon which his father's right was founded, he cannot succeed to the right which followeth from it.

Now what he means is this. Adam possessed universal property, allegedly by virtue of a grant made in Genesis i 28. But the grant was, according to Filmer, made only to Adam. Hence with the death of Adam, what would happen? Locke says that according to common sense the property would revert to its original owner, to God, on Adam's death. If the grant had been made only to Adam. But Locke contends that the grant was in fact made to the whole human race and not only to Adam. Then there is no reason to assume that the donation went only to one child of Adam, as Filmer assumes, excluding all the rest. So any title of Adam based on property is unfounded. Because either the grant was given to Adam and then the property reverted to God. If it was given to the human race, all children of Adam equally inherited, and therefore no claim to power can be based on the inheritance of property. Locke now interprets the grant made in Genesis i 28 (paragraph 86)

But not to follow our author too far out of the way, the plain of the case is this: God having made man, and planted in him, as in all other animals, a strong desire for self-preservation, and furnished the world with things fit for food and raiment and other necessities of life, subservient to His design that man should live and abide for some time upon the face of the earth, and not that so curious and wonderful a piece of workmanship by his own negligence or want of necessities should perish again presently, after a few moments continuance--God, I say, having made man and the world thus, [spoke to him, that is, directed him by his senses and reason, as he did the inferior animals by their sense and instinct, which were serviceable for his subsistence and given him as the means of his preservation; and, therefore, I doubt not but before these words were pronounced (Gen. i. 28, 29)--if they must be understood literally to have been spoken--and without any such verbal donation, man had a right to an use of the creatures by the will and Grant of God; for the desire, strong desire of preserving his life and being, having been planted in him as a principle of action by God himself, reason, "which was the voice of God in him," could not but teach him and assure him that, pursuing that natural inclination he had to preserve his being, he followed the will of his Maker, and therefore had a right to make use of those creatures which by his reason or senses he could discover would be serviceable thereunto. And thus man's property in the creatures was founded upon the right he had to make use of those things that were necessary or useful to his being.

We see that Locke's interpretation disregards completely the text, but claims to give the meaning, the rational meaning, of the text. And the consequence is this. God's grant as a positive grant is wholly superfluous. Man's reason and natural inclination alone suffice to tell him clearly what in this grant

is not told clearly. But I think that according to Locke's last distinction of the conflict with the Bible is 25 ... world of course say cattle. And therefore reason speaks more clearly than the Biblical text. *reason speaks more clearly than the bible.*

Now self preservation, this strong desire, gives men the necessary orientation. In the sequel Locke will enlarge this thought. He has spoken here already of the things which are necessary or useful to his being. Now men need water and some food, i.e. things which are really necessary. But quite a few things are useful to his being, so that can be enlarged. And therefore Locke says in the sequel (paragraph 87), he speaks of "the comfortable preservation of their beings." That is a more adequate formulation of what Locke means. Man has by nature a right to self-preservation, which, under favorable conditions, naturally expands into a desire for comfortable self-preservation. And that, of course, allows for all refinements, gadgets and so on you could possibly think of. That is the true basis of Locke's political teaching as will appear more and more.

The conclusion as far as the immediate argument is concerned is this. Every man, not only Adam, has by nature the right to property on the same ground as Adam had, that right being the right to comfortable self-preservation. Therefore no right to rule, to sovereignty, can be based on the alleged grant of God to Adam in particular. Now the other question arises, a question connected with that of property, the right of inheriting property. According to Locke's teaching here the right of inheriting property is also a natural right. It is obviously a very different story whether we have by nature a right to acquire those things which are necessary or useful for our self-preservation and whether we have a right, a natural right, to be the heirs to our parents' property. How does Locke try to establish that?

(That children have a need for their parents' property.)

In other words, begetting, the one-sided act of begetting is not concluded with the act of begetting. It is accompanied by an obligation, the obligation to bring up the children. And therefore the property of the parents is to be used not only for their own self-preservation or comfortable self-preservation but also for the proper and decent upbringing of the children. But what about this situation. The children are grown up and can very well take care of themselves. Why should there be a rightful claim on the part of these children to inheriting the property of the parents. We are speaking of children who are in their thirties, let us say, and can very well take care of themselves. So they are really no longer in need of being fed by their parents. What about the right to the parents' property on the part of the children. Does it follow from natural law?

(It is not altogether clear that the parents are obliged to dispose of their property to their children when they die even if they are in need. It seems to be a possibility left open that they can grant it otherwise.)

Which passage do you mean?

(In paragraph 87: "But if anyone had begun and made himself a property in any particular thing--which now he or any one else could do shall be shown in another place--that thing, that possession, if he disposed not otherwise of it by his positive grant, descended naturally to his children, . . .")

In other words, that means this. But still, in each case the question is this. Fathers are free at their death or after the children have grown up to leave

And even before their children are grown up.

(And even before their children are grown up.)

Yes, but what about the duty to bring up the children?

(It seems less a duty to bring up the children than a right upon the part of the children to be brought up, which isn't exactly the same thing. There is simply a need upon the part of the children to be brought up.)

But look at page 67 bottom: "Men being by a like obligation bound to preserve what they have begotten, as to preserve themselves, their issue come to have a right in the goods they are possessed of." I think there is an obligation of the parents. The obligation could in reason not be extended beyond the time when the children are grown up and can take care of themselves. After that time, the parents should be, and are according to Locke, perfectly free to leave it to whoever they please. But why does he say the property descends naturally to the children if the father has not otherwise disposed of it by his positive grant? Why is the preference given to the children in such cases?

(If you have already extended the right beyond mere self-preservation into comfortable self-preservation, it would seem that the children would be more comfortable and comfortably provided for.)

In other words, the legal presumption that most people are more concerned ^{even} after their death with their children than with other people. Something of this kind might/also apply in these cases.) No, I think the construction would ultimately be this. If property is ... as Locke had no doubt, then you give the property in full ownership so that the property owner can dispose of it as he sees fit afterward. That increases the attractiveness of property, and is therefore perfectly valid. Disposition of the property after one's death belongs to the property owner. Then the legal presumption (indistinct) in the silence of the property owner it must be presumed that he has willed it to his children. Because if he had very strongly disapproved of his children getting it, he had plenty of time previously to say so.

(It seems that a more comfortable life would mean to fatten their children and eat them.) !!!

~~The children also want to~~
But ~~still the older ones will live.~~

(But then he says that this inheritance is by the laws of God, by the appointment of God and by the laws of the land. The natural thing would be merely self-preservation. I think that links quite well with this problem.)

But the children too have the right to self-preservation.

(- That is secondary to the preservation of the species.)

I see now what you mean, although you stated it very shockingly. Let us put it this way. If in a condition of famine it is understood that the whole family cannot survive. Do not the parents have the right to eat their children in order to propagate again afterwards. I believe that from Locke's point of view no objections can be made to this shocking proposal. If you meant that, but if you mean they are both well and have plenty to eat, then I don't see how it could be defended.

well, that kind of thing is possible. But I am often told that man alone has the ability to calculate. It has something to do with eating their children not because of necessity. You know, that up so well so that they will be more delicious when you eat them. Now he says that it is only man that does this, man alone over against the animals. The animals would emphasize the preservation of the species. Man alone seems to kill his children, expose them and eat them. It would seem to ~~emphasize~~ that man alone has the strongest desire for self-preservation.)

Intelligence - calculation

I see now what you are driving at. I believe, if I understand Locke, one would have to state it somewhat differently. Men, being more intelligent than the brutes, would not follow their blind instincts of preservation of the species but would make this simple calculation, if he survives with this woman, because we can't yet speak of a wife at this stage, they can generate new children and in the meantime survive. Whether it is a very sound calculation is, of course, another matter. For example, how long could they live on these babies. If you speak about this in a practical way, you have to figure it out practically. Still that he is capable of such a calculation, that alone makes it possible to sacrifice anything else including his own children to self-preservation. A brute is not capable of this calculation. If you say that there are pigs and rabbits who eat up their young all the time, that has other reasons as far as I know. I think that is a kind of mistake, I would say, that they sometimes do this.

(Why do you specify in this terrible situation that the parents eat the children. If we are talking about calculation, why don't the children eat the parents?)

Well, I think Mr. Mahdi was assuming very young children, children who would be physically unable to kill their parents. In this other situation it would really be a war of everybody against everybody.

(This was what I was trying to get at, that it wasn't a question of right on the part of the parents but strictly accident that the parents in this case are able to do this. In another case a young strapping son could easily get rid of his father.)

That is quite true, but still there is a question of What you suggest concerns what Mr. Mahdi said, although I still have to overcome a shock in thinking about it. The right is that of self-preservation. That is the over-riding right. If we agree on that, we agree I think on the main point. But that would only ~~then~~ concern the point which you made. According to Locke in the case of man and only in the case of man is the inclination toward the propagation of the species, and therefore the rights and duties connected with that, strictly subordinate to the right of self-preservation. Man alone is a calculating animal... Is this clear. I think this is really very important.

(It's clear but with Mr. Mahdi I am still not altogether convinced that it is only in cases of necessity that this question arises (indistinct) so specifically a matter of taste the children were raised because they were a delicacy.)

I see now. What Mr. Mahdi is driving at is this--that precisely on the basis of Locke these most shocking practices are defensible. Locke says that Filmer makes use of this terrible thing and that it is a consequence of this abominable principle of Filmer's, but it is really also the consequence and more obviously the consequence of Locke's own principles.

(As to the point raised, I'm sure the parents wouldn't develop the power of the children to fight. I'm sure they would only develop their meat for

eating like you do with an animal. (They wouldn't take their chances fighting them, and therefore it is not really self-preservation.)

But the question is whether . . . The reason I gave you the case of the starvation diets only and not luxury is because I think Locke assumed that there is really a natural instinct in man to propagate the species and to bring up the children. You know, people get accustomed to these youngsters, and love them, and then something very special is needed, either a fantastic superstition or extreme need, to break down this affection.

(But he simply speaks of the desire for copulation as the source for begetting children. This is his argument against Filmer.)

But that was a very special case, that of these South American Indians.

(In the case where it is a question of making or creating the children, he says that the parents do not design the children, but rather they usually come by accident. Moreover, that the desire is entirely dissociated from the function.)

But that is, of course, not the whole story. Then they are born and then they are around, and then there are certain complicated consequences. I'm sure that Locke honestly and on solid grounds disapproved of the fattening of children. The example he gives even confirms my interpretation. That was a very special case. They took captive women and only the children they bred with these captive women did they eat, not their own children. So this passage here is in favor of greater humanity than you are willing to grant to him. I'm sorry we have to discuss this. I'm sure that all the infinitely horrible consequences following from the principle of self-preservation alone have to be imputed to Locke as they have to be imputed to Hobbes. But they would say in their defence, "We only admit what people in fact do if they are reduced to emergencies."

At the end of paragraph 90, there occurs the term "the state of nature." x
If I am not mistaken, that is the only occasion in which the term occurs in the First Treatise, whereas state of nature is the key term in the Second Treatise. And the relation of the two treatises can be very well described by this fact. Practically complete silence about the state of nature in the First Treatise, where the scriptural argument and its refutation is the main concern, and preponderance of the state of nature in the Second Treatise, where the argument is meant to be strictly rational. I will discuss this point on a later occasion.

I draw your attention only to a few remarks on page 70 and 71 which show how right the contentions of Mr. Mahdi were regarding the absolute primacy of self-preservation as distinguished from preservation of the species. From the right of self-preservation and comfortable self-preservation there follows the right to property. But who is to be benefitted by the property you acquire for your comfortable self-preservation? (See paragraph 92, page 70, line 3)

Property is for the benefit and sole advantage of the proprietor.

On page 71 (end of paragraph 93)

it

. . . the son cannot claim or inherit by a title which is founded wholly on his own private good and advantage.

Property, precisely because it is based on the individual's right to his comfortable self-preservation, is founded wholly on the individual's own private good.

and advantage. The help of the children come in only accidentally. Up to a certain point, the bringing up until they are capable of taking care of themselves is a kind of natural duty, certainly for Locke too, but that is about all. To that extent Locke is really the originator of the extreme rugged individualism. But this teaching has also another side. This rugged and radical individualism, wholly on its own private good and advantage, accidentally but necessarily is beneficial to all. The whole society is better off if all are passionately concerned, each is passionately concerned with his own self improvement regarding property. And you can say that is the true justification of this individualism. But that will become clearer when we come to the chapter on property in the Second Treatise.

(End of lecture)

Let me try to restate what you say. The first impression is this--that Locke emphasizes that Filmer's argument is entirely scriptural, which, of course, as we have seen is not true. The mere fact, for example, that power over the children is acquired by begetting is taken from Grotius and, let us say, from a kind of Roman tradition somehow, but certainly not from the Bible. And there are other points. But Locke insists that Filmer desired and intended to build his whole argument on the Bible, and he gives Filmer therefore a much more scriptural character, that is, Filmer's argument, a much more scriptural character than it possesses. Now on this basis his argument has this character (illustrates on board). Filmer as different from Bible. That is the thing which he ostensibly does. But a closer consideration shows that, granted he shows to some extent that Filmer's scriptural argument is atrocious, there is something else to be added. That, of course, is not so visible. But we have seen some examples last time, for example, the thesis that the paternal power or the parental power includes the power of life and death, which according to Locke's explicit assertion has no scriptural basis whatever, is shown by Locke's own quotations and by the arrangement of these quotations to possess a scriptural power, e.g. the passage about this naughty or wicked son whom the father and mother brings before the community and he is stoned. You remember. According to the biblical text this depends entirely upon the judgment of the parents. The parents do possess in this case such a power. However this may be, to come back to the argument. If one looks somewhat more closely, one sees that while Filmer does not have a sound biblical basis, Locke's own argument is different from the biblical point of view. But if one digs still more deeply, one will come across a much more interesting problem (~~should be proposition~~), which cannot be true in every little point but which is fundamentally true, namely, that Filmer's view is fundamentally in agreement with the biblical position. And therefore, by criticizing Filmer, not of course in this or that little point but in the fundamental propositions, Locke is really criticizing the biblical position as a whole. And this refutation, or alleged refutation, of the Bible is the basis for a purely rational political teaching to be sketched in the Second Treatise. But even in the Second Treatise it is only sketched; one has to look very carefully to get the pure rational teaching out of that.

You mentioned this point about the obscurity of scripture. Surely that is one important part of the argument. If the teaching of the Bible is obscure, it can't be of any help. We have no other star and compass, as he puts it, except reason. This is an important part, incidentally, of the argument in the Essay concerning human understanding. What he says there about the obscurity of language as a major impediment to the progress of understanding applies particularly to the biblical language, as I think can be shown there. Now you also saw this anti-biblical intention in Locke in the stories of the Tower of Babel as well as in his account of the Judges. In talking about the Tower of Babel the fact that this was a rebellion is in no way mentioned or alluded to; it was an act of a free people; everything was fine. Why should they not make that decision. And in the case of the judges, they were elected by the people in free elections. The divine vocation is alluded to in an ambiguous expression but in no way important to his argument.

We have now to turn to some details. I remind you again of the broader context. Now there are two natural law doctrines. We must never forget that. We have seen that in the early essays, and that is of course the background and to some extent the content of the Two Treatises itself. Now let me describe these two alternatives. The fundamental premise of the older view is providence. The opposite of that, we could say, is the denial of providence. But I prefer a positive expression. And I shall call it state of nature. The meaning of the

term will be explained later. In connection with the state of nature, think of the Hobbeian famous story: a state of war of everybody against everybody, a state of poverty and misery in every respect. That is the state in which man finds himself naturally. All the pleasantnesses and amenities of life are due to man's own effort, who fighting against his starting point, his origin, i.e. the state of nature, makes himself tolerably happy. I will explain the meaning of the term later. The second point I would (show as possible) (illustrates on blackboard) -- conscience -- and -- demonstration. By which I mean this. According to the traditional view man has by nature awareness of the moral principles. There is a more technical term used for that in scholastic literature, but we don't have to go into that and can use this more popular term -- conscience. There is such a thing as a conscience which all men have... On the other hand, demonstration means all our knowledge of moral principles is acquired by our own effort, by studying the universe, by studying man, and only by that do we acquire some awareness of moral principles. ~~It is a clear formulation by Hobbes that~~ the laws of nature, the moral laws, are but conclusions. That has to be taken very literally. There are no indemonstrable principles of morality as there would be according to the Thomistic teaching. They are but conclusions from principles which in themselves are morally neutral. Sense perception, the study of the universe and so on, as Locke sketched that in the early essays, bring us to the realization of moral principles. And the third point is that the key terms describing human excellence in the older view was virtue. Now the term virtue is used also by Hobbes and Locke. But, in order to make the difference clear, I will replace it by its concrete meaning. The concrete meaning now is peaceableness. Nothing going beyond peaceableness has any moral status. Now that means a lot of things. For example, you can have peace, absence of violence and so on, on a very low level. Without any higher considerations, you can have peace and external order on any level. Therefore, it is better to rephrase it by peaceableness. You could also say sociability, to be nice fellows, good sports and so on. No better term, however, occurs to me at the moment. A narrowly conceived social virtue takes the place of virtue in the full sense. And therefore, from this point of view, i.e. the Hobbes-Locke point of view, the character of marriage and such things is wholly undetermined. Probably you need some arrangement in order to avoid constant violence, but whether that is done via monogamy, via polygamy, via trial marriages, and so on, that doesn't make any difference. He leaves that entirely to the human legislator to decide. There is no institution which has intrinsic superiority to the other. Whereas according to the older notion, very incisive things, for example, regarding marriage, or for that matter, regarding property (and the use of property, were implied. In modern times the demands made by natural law are extremely limited to the bare minimum needed for mere sociality.

Now a word about the term state of nature. When you read the literature on political theory or history, you find constant references to the state of nature, say in Lucretius' poem, or among the Sophists and so on. But the strange thing is that in the way in which it is now understood it occurred for the first time clearly and importantly in Hobbes. Hobbes still excuses himself for using that term. He says somewhere, I think in the preface to De Cive, "If I may be permitted to call it a state of nature." But the term state of nature, we can say, did not exist prior to Hobbes. I am perfectly willing to be corrected if my information is incorrect. I can only say this to the best of my knowledge. Prior to Hobbes the term didn't exist in political theory. If such an equivalent was used, then it was of course in the Aristotelian sense and meant the healthy state of a being, the natural state of a being. That was not a particularly political term; it applied to any being. ~~state~~ The natural state,

say if we have our two arms and two legs, and the state in which they are imperfect, deformed, that was something unnatural, defective. The true pre-history of the term state of nature leads to Christian theology. And here you have this distinction: a state of nature which is subdivided into a state of pure nature or uncorrupted nature and a state of fallen nature. And that is distinguished from the state of grace. I disregard other ~~such~~ divisions. This is sufficient for our purposes. The state of nature--for example, when you read Suarez, he also speaks of a state of nature. But what does this mean? It means, for example, classical antiquity; these states which existed there were in the state of nature, which means there was no grace. But state of nature is not a pre-social or pre-political state. The crucial point is the absence of grace. But in addition, these subdivisions are very important--the state of pure nature, meaning prior to the fall. If man prior to the Fall did not have graces, which is denied by Catholic theology, or in the state of fallen nature after the Fall. Now what Hobbes does is this. He makes this distinction: state of nature and state of civil society. I think you see immediately what the Hobbesian distinction means. Well?

(The state of perfection would be the state of civil society.)

Yes, but still, what is the difference? In the first place the distinction between the state of pure and fallen nature is dropped. The Fall is non-existent or irrelevant, and the remedy for the inconveniences of the state of nature, to use Locke's phrase, is not grace but government. That is the meaning of that. Therefore, as long as this notion prevailed, the crucial question was how to reconcile this new scheme with the biblical report. This one (points to board) could be reconciled with the biblical story, because it was derived from it. Where is the state of nature in the Hobbes-Lockean sense located in biblical history? This is a very necessary question, and whenever you raise this question you will see that the modern distinction of state of nature and state of civil society is really incompatible with the Bible. Now this is obscured by another fact, and that has something to do with the difference between great thinkers and universities. The men who established this doctrine--Hobbes, Locke, Rousseau--but then they made a certain impression on university professors. And the university professors did not have the courage, boldness, impudence, however you call it of these men, and therefore they made a kind of compromise between this modern thought and the traditional teaching. And the simple formulation is this--the concept of the state of nature does not refer to anything real or actual. The state of nature is a mere hypothetical construct. That you find in all these textbooks of the famous university natural law teachers of the 17th and 18th century. By thinking of the state of nature as a purely hypothetical construct, the question of its place in history was avoided. But it existed and it asserted itself. I think one cannot understand the emergence of a philosophy of history in the 18th century if one does not keep in mind that problem. But I can only mention that in passing here; we may discuss that in the next quarter in the seminar on Kant.

To come back to our question. What does it mean that it is a hypothetical construct. It means this. We try to define what rights and duties man enjoys under natural law alone, disregarding all positive law, human or divine. The state of nature is the state in which man finds himself if he possesses only natural law rights and duties. That was the meaning of this. Now while this applies, of course, to some extent to Hobbes-Locke-Rousseau, in Hobbes-Locke-Rousseau the question of the state of nature, of its legal character, is inseparable from the assertion of its actuality. It is for Hobbes-Locke-Rousseau at the same time an assertion regarding the origins of man, the actual origins of man. The state of nature replaces the biblical account of the origin, that is to say, the story of creation and of paradise and the Fall. In my very sketchy historical

survey, there is one difficulty which someone must solve sometime, someone who knows some Latin of course. As far as I can see, John Wycliffe uses the term state of nature in a somewhat different sense than it was traditionally used. And that I think someone should clarify on some occasion. I don't think it is in any way the Hobbes-Locke-Rousseau notion, but there is a certain complication created by that. But this only in passing. Now let us then turn to the text. Or is there any other point you would like to discuss in connection with these general comments?

(As to this distinction between pure nature and fallen nature, did they have any other . . .)

Well, that is of course fallen nature. Fallen nature applies to all human beings after the Fall until the beginning of Christianity. . . .

(Pure nature is only prior to the fall?)

Prior to the fall, yes. Even that is not literally true, but we cannot go into that. There are more subdivisions, for example, there is the state of the law, the old law, which is distinguished from the state of grace and not simply identical with the state of nature, and so on. But we can't go into that now. So, for our purposes that is perfectly sufficient and I think makes clear the meaning of Hobbes-Locke-Rousseau's notion of the state of nature as distinguished from the state of civil society.

(Is it not implied that the state of ^{pure} nature is pre-historical. In a sense it is hypothetical from the historical point of view.)

But the distinction between historical and pre-historical is absolutely inapplicable to the Bible. Because if you take the Bible as it is meant, the creation of man and the fact that man existed in a state of purity is as real (by this I do not mean to say you have to take the first chapter of the Bible literally, but that men originally lived in a state of innocence is as real) and as true as say Napoleon's defeating the Prussians in 1807. If you say the assertion of man's original innocence is mythical, then you have abandoned the biblical basis. I know that today the term "historical" is used in a very loose way.

(I understand that but Hegel, for example, may speak of something real which is not historical.)

Give me an example. I think it could be the other way. Hegel could say something is historical but not real. For example, that Hitler had such a mistress is historical, you can prove it, but it is of course unreal in the sense that it is of no significance. You understand what really happens and what this means. That is absolutely unimportant--i.e. something like this in Hitler's private life. It is historical but not real. I don't believe he would say the opposite. The words "history" and "historical" are not biblical terms. That people today say with some plausibility that in the Bible, and primarily in the Old Testament, history has been discovered--you must have heard this many times--is an entirely different story. But this appears so on the basis of a completely non-biblical starting point, namely, the so-called historical consciousness of the 19th and 20th century. History would mean for the biblical authors, if they had such a word, a record of past events. That's all. The providential dispensation of which the Bible speaks is interpreted as a historical process by modern man, but is not in itself that. My simple argument is that

there is no Hebrew word for history, history in the sense of a historical process. In modern Hebrew they had to introduce the Latin or Greek word history and Hebraize it. The Hebrew language doesn't know of that. And similar considerations apply also to the New Testament

(. . . (indistinct). . . that man became a history maker in the sense that after he began to choose between good and bad. It means it does begin with the Fall, because prior to the Fall he was not choosing, he was all the time eating the good.)

Do you mean to say it is something good to be a history maker?

(I was only saying that history does begin with the Fall, after man started to make the choice. Before this he was just guided by Providence; he did not have the exercise of free will. . . .)

That it was an improvement. That I know very well. For example, Kant gives such an interpretation of this story. That prior to the Fall man were, as it were, still brutes, and by this Fall he acquired in a way freedom. And freedom is of course the basis of what these modern men mean by history. After having rejected the truth of the Bible, a man can say there is some element of truth in the Bible, and then say this kind of thing. But it is not a biblical teaching. It only confuses one, I believe. It presupposes that one knows what history is, and it is not so sure that we know what that is and perhaps even whether it exists in the sense in which it is asserted. History has a simple meaning if it means records of the past, study of the past, a coherent account of the past. That was the original meaning of the word more or less. That makes sense. That existed and is necessary and so on. But when we speak of history today in the metaphysical sense of the word, then it means not the human activity concerned, concern with the past, with understanding and knowing the past, but it means a historical process. And this historical process is then emphatically not the same as the mysterious divine dispensation. That was indeed meant by the biblical authors, something different. Maybe it has some theological overtones today, that is possible, but it is still not identically the same. One must study this. It is along question. I grant you this--that this problem of the state of nature, in so far as it is deliberately opposed to the biblical account of the origins, has something to do with the genesis of the modern concept of history. But this we cannot observe in Locke. That comes out only later. For example, in Kant one can see this very clearly, but I can't go into that.

(Why is it necessary for Hobbes-Locke-Rousseau to maintain that the state of nature is an actuality as opposed to a hypothetical construct?)

Because the question must be raised: What is the status of man in the universe? ~~It is very simple.~~ Is there a just government of mankind? Divine Providence. Or, as Spinoza put it, is there justice only where just men reign. Is that not an important question? Whether there is any justice actually anywhere except where you have a tolerably just human government. This enormous question is involved in the question which you raised, whereas if you speak of a merely hypothetical construct, you evade that question. You can disregard it in certain narrow contexts provided you take it up separate, but merely to avoid it means to evade it and means not really to raise the deeper questions. That is to avoid it. The question which goes beyond the purely methodological and heuristic (?)

procedure concerns exactly the whole situation of man. Is he ruled by a just God or not? And what these men imply is no. It can also be put differently: what is the origin of man? Has man been created by God in the image of God or not? The alternative can be understood in a number of ways, e.g. Darwinian and so on, but that is secondary compared with the other question. And you see that these questions of whether man is created by God and by a just God are bound to have political consequences somewhere.

(My question is whether there is just the one alternative for these thinkers. If there isn't a just god, is the only alternative an order derived from the state of nature. In other words, I recall in the Essay on Inequality Rousseau with uncertainty discusses the state of nature, and he himself admits that he ...

Sure, I remember these passages. You have also to read Rousseau's own notes to the Second Discourse. Rousseau knew very well that the doctrine of the state of nature is incompatible with the biblical account. The reason why he said his account of the state of nature is purely hypothetical, the most important reason, is precisely in order to avoid the open conflict with the biblical account. That he makes rather clear. It would only require a half hour of reading of this passage to settle that. It would only confirm what I say. As a matter of fact what I said is partly based on the Second Discourse.

Now let us turn to the first part of Chapter 10, "Of the Heir to Adam's Monarchical Power." *That* This is an important question, given Filmer's principle it is obvious. If all government stems from Adam, then the conveyance of Adam's power to posterity is absolutely crucial. The interesting and strange thing in this chapter is the extraordinary repetitiveness of Locke. If you look on page 77, line 3: "Either governments in the world are not to be claimed and held by this title of Adam's heir, . . . or, if it really be, . . . the true title to government and sovereignty, . . ." and so on. And the next line, paragraph 105: ". . . either this right in nature of Adam's heir . . . is a right not necessary . . . or else." "Either this title of heir to Adam . . . or else." And to some extent even the sequel is repetitive. Three times identically the same thing is repeated, and that is very strange. It makes it, of course, in a way easy reading. When you read when you are drowsy, in reading the first half of the page and wake up in the second half, you still get everything. I think such books may be more successful in a popular sense than those that do not allow you to be drowsy at any point. The question could very well be raised whether that is sufficient, whether Locke does not have a deeper intention than merely to be nice to the lazy reader. I suggest the following consideration. If you look at this three-fold statement of two alternatives, the six statements altogether, you find in the central statement (the second point, paragraph 105, line 5): ". . . or else all the kings in the world but one are not lawful kings, and so have no right to obedience." Now if you compare this with the five other statements, you see that in all the other statements Adam's heir is mentioned. In this one Adam's heir is not mentioned. Now, here Locke says--if Filmer is right, there is only one lawful king in the world. By this he rises above the peculiarly Filmerian thesis, because here there is no reference to Adam's heir, and states a much broader problem. Have you ever heard the assertion that there is only one lawful king in the world, or something reminding of it?

(There is a parallel to that in the ecclesiastical authority, only having one authority here on earth, the church of Christ.)

But I think even beyond the question of the church's successful government on earth, God is the king. Now that means, of course, if this is understood radically,

then all other kings have a precariousness, and therefore a questionable power as is shown by the simple case of conflict. Whenever an earthly king commands something which contradicts the command of God as king, God's command has the right of way. But if you understand this in the light of the doctrine of sovereignty--that in case of conflict between different jurisdictions there must be one and only one man or body of men who have the right of way, and that is the sovereign, the sole sovereign--you arrive at Locke's conclusion. In other words, what I believe to be indicated here and to go through the whole book is this. It is the whole question of divine government which Locke has in mind while discussing ostensibly only the very silly doctrine of Filmer.

Now let us go on in the same paragraph, but a bit later.

For if kings have a right to dominion and the obedience of their subjects, who are not, nor can possibly be, heirs to Adam, what use is there of such a title, when we are obliged to obey without it.

Now who are those who cannot possibly be heirs to Adam? Let us look on page 81, top.

Here again our author informs us that the divine ordinance hath limited the descent of Adam's monarchical power. To whom? "To Adam's line and posterity," says our author. A notable limitation--a limitation to all mankind; for if our author can find anyone amongst mankind that is not of the line and posterity of Adam, he may perhaps tell him who this next heir of Adam is; but for us I despair how this limitation of Adam's empire to his line and posterity will help us to find out one heir.

A little later on, on the same page, "... that is, in plain English, anyone may have it, since there is no person living that hath not the title of being of the line and posterity of Adam." Every human being is an heir to Adam. But what does he mean then when he says or speaks about kings who cannot possibly be heirs to Adam. Under what conditions (Trans. note. There is about a twenty second break in the tape here) ... That might be very useful.

Now I suggest that we turn to paragraph 111 (page 80, bottom). He quotes Filmer here and says, i.e. Filmer says:

That not only the constitution of power in general, but the limitation of it to one kind, i.e., monarchy, and the determination of it to the individual person and line of Adam are all three ordinances of God.

Not only the constitution but also the limitation, namely, that it be monarchy, and the determination of that monarchical power to the individual person and line of Adam are all three ordinances of God. Locke's comment on page 81 (top) begins as follows: "Here again our author informs us that the divine ordinance hath limited the descent of Adam's monarchical power." You see, limited where Filmer had spoken of determination and not of limitation. What could he possibly mean by that? Filmer's king is a sovereign. The term sovereign is used by Filmer and he means it, of course, in the broad sense in which it was introduced by Bodin and by Hobbes. Now it is of the essence of sovereignty not to be limited, or limitable, but here it is said to be limited. What could he possibly mean? What is the status of the descent, or rather the succession, in Hobbes' doctrine of sovereignty. You have an absolute monarch. How is the descent decided? How do you decide as to the descent from the monarch. Where does the right of appointing the successor lie?

(With the monarch himself.)

Surely. If there were a fundamental law of the realm which determined such questions, that is in itself incompatible with sovereignty. So from Locke's point of view the law (indistinct word) proves to derive its validity from the silence of the present sovereign. If the present sovereign wants to have his daughter to succeed him rather than his son, it is of course refused. Now what Locke indicates here is this--that whatever Filmer may have said about the omnipotence or quasi-omnipotence of his king, he doesn't know what sovereignty really means. That would, of course, be incompatible with such a principles as primogeniture or what have you. So this chapter is not unimportant.

On this same page (81) toward the end of the paragraph, the bottom of the page, there is this remark:

God or nature has not anywhere, that I know, placed such jurisdiction in the first-born; nor can reason find any such natural superiority amongst brethren. The law of Moses gave a double
to / portion of the goods and possessions of the eldest; but we find not anywhere that naturally or by God's institution, superiority or dominion belonged to him; . . .

These are strange expressions. What is the status of the law of Moses?

(It is not defined.)

Yes, that is hard to say; it is very ambiguously stated. He could naturally say God has not placed any jurisdiction, such jurisdiction, in the first born. But divine institution has given a double portion of goods to the first born. But I admit the ambiguity, and perhaps that was exactly what Locke wanted to do. Someone can draw from this the conclusion that the law of Moses is merely positive law, but the context does not exclude the possibility that the law of Moses means the same as God's institution. In this context I would like to refer to an earlier passage on page 75, the top of the page: ". . . the law of nature, which is the law of reason." Now here he clearly distinguishes between nature and reason. You see, "nature has not . . . placed such jurisdiction . . . nor can reason find any such natural superiority amongst brethren." Reason and nature are two different things which happen to agree in this point, but they are different. On page 75 he says "the law of nature, which is the law of reason" and there he identifies reason and nature. In his Reasonableness of Christianity I found this very revealing expression: "The law of reason or, as it is called, the law of nature," which means the proper expression would be the law of reason, but it is called the law of nature. That is the necessary consequence, it seems to me, from Locke's as well as from Hobbes' principles.

(Hooker also says that quite explicitly. He uses the term the law of reason and says that that is the proper term for what people call the law of nature.)
law - nature / reason

You may be right. But still in Hooker I'm sure the context and the meaning of these passages . . . I think you are right. But still in Locke it is fundamentally different because for Locke in strict language the law of nature would be a law which men can't transgress, and the law of reason is a human project, which doesn't mean that it is arbitrary, which men can necessarily transgress. Laws of digestion would be laws of nature proper, whereas the provision against theft and similar things would be only a law of reason, a mere postulate if a necessary postulate.

In paragraph 113, of course, his story of Esau and Jacob implies, and that is, of course, not mentioned or not emphasized by Locke, that Isaac had no objection to one of his sons being the ruler of his brothers. That is proven by the blessing. So to that extent the rule of a brother over brothers does have biblical authority. But that we don't have to . . .

(It is rather interesting that he argues later that because Jacob didn't in fact exercise this over Esau,--there is no indication that he ever exercised it, that Esau had his own army, his own men, and Jacob had his. And in fact Jacob was in great fear for a while of Esau. . .)

We will come to that passage; that is a crucial point, I think. Let us read on page 84 top.

Accordingly we read (Gen. xxv. 5, 6) that "Abraham gave all that he had unto Isaac, but unto the sons of the concubines which Abraham had, Abraham gave gifts, and sent them away from Isaac his son, while he yet lived." That is, Abraham having given portions to all his other sons, and sent them away, that which he had reserved, being the greatest part of his substance, Isaac as heir possessed after his death.

Let us leave it at that. Now if you compare the biblical verse as quoted by Locke with the interpretation, we see interesting differences. "Abraham gave all that he had unto Isaac." Locke says he gave Isaac the "greatest part of his substance." And "Abraham gave gifts" while Abraham, in Locke's version, gives them portions. Gifts mean merely a free action; portions could very well mean what he is obliged to give. So Locke is giving here an example of how his teaching, his natural law teaching regarding inheritance, differs, if not from biblical law at least from biblical practice. And this whole story of Ishmael is, I think, very illustrative, and one should go into it much more than we can now.

In paragraph 116 Locke seems to argue that if Filmer were right, Esau would be the ruler of Jacob. In other words, absolute contrary to the whole thesis as it is presented in the Bible. But we come now to a much more important passage that is characteristic (paragraph 121) which we should read.

And hence not being able to make out any prince's title to government, as heir to Adam, which, therefore, is of no use and had been better let alone, he is fain to resolve all into present possession, and makes civil obedience as due to an usurper as to a lawful king, and thereby the usurper's title is good. His words are--and they deserve to be remembered: "If an usurper dispossess the true heir, the subjects' obedience to the fatherly power must go along and wait upon God's providence" (O. p. 253). But I shall leave his title of usurpers to be examined in its due place, and desire my sober reader to consider what thanks princes owe such politics as this which can suppose paternal power--i.e., a right to government--in the hands of a Cade or a Cromwell; and so all obedience being due to paternal power, the obedience of subjects will be due to them by the same right, and upon as good grounds, as it is to lawful princes; and yet this, as dangerous a doctrine as it is, must necessarily follow from making all political power to be nothing else but Adam's paternal power by right and divine

institution, descending ^{from} upon him without being able to show to whom it descended or who is heir to it.

Let us start from this, the sentence in the middle of that paragraph: "But I shall leave his title of usurpers to be examined in its due place." Does this remind you of an earlier remark? In other words, he will not examine Filmer's title of usurpers here. Do you remember?

(Well, in the Preface . . .)

Exactly. Let us look at the Preface. What did he say in the Preface precisely?

("If he think it not worth while to examine his works all through, let him make an experiment in that part where he treats of usurpation, and let him try whether he can, with all his skill . . .)

Of course, that is the root of the whole context of the Preface. A part of the book has may been destroyed, or withheld; he doesn't tell you what happened, but certainly it is not published. This part dealt, among other things perhaps, with usurpation. And here we have another reference to that subject of usurpation is not mentioned here.

(Also in section 80: "This is so strange a doctrine that the surprise of it hath made me pass by, without their due reflection, the contradictions he runs into . . ." Note this in connection with section 79.)

That is correct.

(Although he does say at the bottom of the page: "I shall a little more particularly consider how 'inheritance,' 'grant,' 'usurpation,' or 'election,' . . .)

Yes, that of course would not formally contradict the Preface, would it?

(No, when he says "I shall a little more particularly consider" that doesn't mean . . .)

Yes, but at any rate in paragraph 79 he does discuss usurpation and gives three examples. That would be worth your study. We cannot go into that.

I would like to draw your attention to another passage because that is more possible to discuss here. On page 17 center (paragraph 16). Filmer had spoken of God's appointment. Locke says: "I wish he had told us here what he meant by 'God's appointment.' For whatsoever providence orders, or the law of nature directs, or positive revelation declares, may be said to be by God's appointment; but I suppose it cannot be meant here in the first sense, i.e., 'by providence'; because that would be to say no more but that as soon as Adam was created, he was de facto monarch." Now let us turn here, here we have the question of the usurper. What is a usurper? He is a monarch, but not de jure. He is only a de facto monarch. But now we see how this fits together. Filmer himself said that a usurper, a mere de facto monarch, had his power through God's providence. Unless I misunderstand the meaning of wait upon, but wait upon means, I suppose, to defer to. Doesn't it? That is the way in which I understood it. "If an usurper dispossess the true heir, the subjects' obedience must go along and wait upon God's providence." Or could it mean wait until God restores it? What is the proper interpretation.

(Well, in the traditional Christian teaching obedience would be due even to unjust kings in so far as all authority comes through God, and while specific acts might be ruled out . . .)

But let us first begin with the purely phonological question, the meaning of "to wait upon." What does "to wait upon God's providence" mean? What does Filmer mean by that?

(Indistinct.)

Yes, but could it have the meaning "and we must wait until God deprives this crook?" But at any rate I believe that the remark in paragraph 16, where he says Divine providence shows itself in who rules de facto regardless of whether he rules de jure or not. This is at least what is suggested to me. What would be the implication of this? Let us look at page 96 bottom, where Locke also says, in interpreting Filmer: "The governments of the world are as they should be." The coincidence of the is and the ought. Is this the meaning of providence? If God rules the world, must the world not be fundamentally in order? I believe that this is what Locke has in mind. Well, if one would develop that one would come down to this argument, which I know from other thinkers of the same description. Either God is the cause of everything, he is omnipotent strictly speaking, then he must be the cause of evil too. Or else God must be . . . in other words, the omnipotence is incompatible with the goodness. Or if you want to maintain God's goodness, you must admit an independent cause of evil, call it matter, call it an evil prince, or as you want it. I believe Locke's argument has something to do with this kind of reasoning. That is certainly strange. This passage in paragraph 16, which was wholly unintelligible to me, i.e. the de facto monarch, becomes intelligible I believe if it is linked up with this passage. Do you understand that, i.e. how this argument would run? Of course there is a great implication. According to the orthodox teaching, the cause of an evil is the misuse of freedom by created beings, be it angels or men. The implication, of course, is that this is inadequate as an explanation of evil. That is somehow presupposed. And we have seen a number of instances where Locke indicates that he does not accept the doctrine of the Fall. That would be part of that story. I cannot go beyond that now, or does anyone . . . I'm sorry I have not even looked up the passage in Filmer's observations on Locke, which he quotes here. Locke does not always quote quite literally, by the way, so that it is necessary to look it up.

(Would you say then that Locke's implication here is that God really has no care of the world. In other words, that while he may have made it, the causes are completely contained within the world itself and thus we are free to do whatever we want to. In other words, the complete destruction of providence.)

(In an earlier version this thought occurs in Averroes in this form. God is not the efficient cause of the earth, but only the final cause. That preserves the perfect goodness of God, because it allows an independent principle explaining corruption, evil and so on in man. But that, of course, would not be suitable in Locke's metaphysical background (?) But still the fundamental problem is the same--the relationship between omnipotence and goodness. That is the problem. Are omnipotence and goodness compatible? Does not omnipotence necessarily mean that God is the cause of evil. That means, of course, more specifically, is the traditional theological distinction between God's permission and God's causation tenable? That is a long story, but that is somehow implied in this. Averroes

I see here a note referring to a footnote on page 89. I don't want to go into it, but that is a very strange note, because "Locke by denying that positive law provides an appropriate answer to the question he raises . . ." I do not know what this note means, because Locke knew that of course. Locke said that Filmer has no right to refer to positive human law, and knows of course that

only positive human law could settle that. I do not know what that means, but it is not important.

This paragraph 131, to which Father Buckley referred, is important also for another reason. Does Locke really say that war and peace is limited to political society? No, he denies that. But that is very crucial. Why is it crucial? War and peace, and not only factual war and peace, but . . .

(end of reel)

. . . Now a few more points. In paragraph 135 (page 97) I find also a strange remark. When he speaks of Abraham and Lot—"they parted by consent (Gen xiii), hence he is called (he being Lot), both by Abraham and by the text, Abraham's brother." Still, what does he mean by a distinction between Abraham and the text? What does such a distinction generally mean, if we take a profane author? Well, say . . .

(Here in this case Lot is strictly speaking Abraham's nephew by the blood relationship . . .

That Locke says:

(. . . so I think what it means here is that not only Abraham called it when he is directly speaking, but when speaking in the text itself the author of Genesis in places refers to Lot as Abraham's brother.)

But in this case I looked up the passage and only Abraham mentions or calls Lot a brother. The author of Genesis xiii, as distinguished from Abraham, doesn't mention him at all. So what does he mean then? What does this distinction between Abraham and the text mean in a case where it is not applicable, because the text, as distinguished from Abraham, doesn't call Lot a brother. I looked up all the passages in reference to Lot, and there is nowhere a reference by the text, as distinguished from Abraham, to Lot as a brother. So in this case I am pretty sure ~~of it~~ that there is a difficulty. Now if you look up Genesis xii in this context, where this is mentioned (Gen xii, verse 8), where Abraham says "for we be brethren", in the preceding verse I read:

And there was a strife between the herdmen of Abram's cattle and the herdmen of Lot's cattle: and the Canaanite and the Perizzite dwelled then in the land.

One has to have a bit of knowledge of Old Testament criticism. Now this passage, "and the Canaanite . . . in the land", was one of the key passages in which it was proved that Moses could not be the author of the Pentateuch. You see, then. In Moses' time, of course the Canaanite was in the land. But if he says "the Canaanite was then in the land" it means at present he is not in the land. But in Moses' time he was in the land. That is one of the key passages. It is a reference which is confirmed by something else in the sequel. Don't believe that this is an out of the way thing. The three famous authors of the seventeenth century, decades prior to Locke had tried to establish that Moses cannot be the author of the Pentateuch, and that had an enormous implication. Because in the traditional view, the divine origin of the Pentateuch, at least the popular understanding of the traditional view, and the Mosiac origin were identical, and therefore an attack on the one was thought to be fatal to the other. Therefore that is not a negligible little thing here. And you see in the next paragraph, which proves I think that I am on the right track, "this discovery it seems was reserved for our author to make two or three thousand years after." Now let us

do some arithmetic. That was written say, to simplify matters, in 1700. What is 2,000 years prior to 1700? 300 BC. Now that is certainly not the date in which the Pentateuch was supposed to be written. At least the hypothesis which was very common in the 17th century among such people said Ezra was the true author of the Pentateuch. It was very late, that is the inference. I mention the point only for this--that this biblical criticism in its very sweeping way, as it exists in the 17th century, was known to Locke of course. He had read the Leviathan. That suffices for being aware of that. And Locke adopted it; otherwise he could never have said two or three thousand years after. So, therefore, the Bible was not an authoritative text.

There are a few more points we should mention. I regard this possibility I mentioned as certain and have not the slightest doubt of it, but I am very dissatisfied because there are so many steps which I do not understand. For example, where Locke is so repetitious. He doesn't say anything new for two pages, and yet he must have had something up his sleeve. But there I am completely unable to discover it. It would require a work of a few years I think to really bring to light the implications of this treatise. This passage to which Father Buckley referred in paragraph 141 (page 101 bottom). You see, if you take the individual points like, is this verse in Genesis of crucial importance?--well, you can say, well that is antiquarian. But these arguments referring to the very specific biblical passages were of crucial importance in this discussion as regards the authority of the Bible or not. That is no longer today equally important because the religious positions have made themselves in various ways free from (a strict principle of verbal inspiration, but in this stage these arguments were of crucial importance. The usual way to meet these difficulties was, of course, this--to say that Moses inspired by God wrote the text...There is no absolute impossibility that God dictated Moses the account of Moses' own burial at the end of Deuteronomy. But today this kind of theological explanation is usually regarded as childlike; they arouse a smile. But that was the only way in which the difficulty could be taken up by traditional theology. We must not minimize the importance of that. Whatever people may do today in so-called history of civilization is, of course, saved from this, the presumption being that the authority of the Bible as it was understood traditionally has been disposed of by biblical criticism. Now this premise, into the merits of which I will not go, is of course already established for a man like Locke. One should not deceive one's self about it. Because the later refinements which were made in the 16th and 19th centuries or 20th century do no longer concern the Pentateuch. Once you admit that the Pentateuch was not written by Moses, then whether you say this particular chapter was not written by Josiah and so on doesn't raise any interesting fundamental question anymore. So that was really the issue.

Now connected with it is a remark on the top of page 101. Filmer had said "Most of the civillest nations of the earth labour to fetch their original from some of the sons or nephews of Noah." Locke says

I fear the Chinese, a very great and civil people, . . . trouble not themselves much about this matter. All that believe the Bible--which I believe are our author's "most of the civillest nations"--must necessarily derive themselves from Noah; but for the rest of the world, they think little of his sons or nephews.

In order to appreciate the significance of this passage, one has to look up what Locke says about the Chinese elsewhere, e.g. the Essay concerning Human Under-

the true
basis of
natural law

standing. Locke, following quite a few travelers at that time, says the Chinese, at least the intellectuals among Chinese, are atheists. They do not have an idea or knowledge of God. Now Locke says, if we put these two passages together, people can be very great and civil without having an idea or knowledge of God. I don't have to point out the gravity of this passage. I only try to link it up with Locke's doctrine of natural law. "A very great and civil people"—a people cannot be very great and civil if it does not comply with the natural law. But a people can be civil, they can comply with the natural law, and at the same time be atheistic. The natural law cannot have a theological basis. And, therefore, this other argument starting from property and government, to which I referred on a former occasion, that is the real argument of Locke underlying Locke's natural law.

Yet today these things have become trivial. When people speak of the great cultures and civilizations today, that is all settled and no longer a matter for discussion. The claim raised by the Bible is long forgotten, at least in this secular tradition. But Locke was one of the great founders of that tradition, and we must not overlook that. And that is not an accidental little thing. It is crucial for the whole doctrine of natural law.

In this same paragraph, toward the end (to which Father Buckley also referred) you see he quotes a few, still in answer to Filmer's argument:

But if it were Ogyges, Hercules, Brama, Tamerlain, Pharamond, nay, if Jupiter and Saturn were the names from whence divers races of men, both ancient and modern, have laboured to derive their original, will that prove that those men "enjoyed the lordship of Adam by right descending to them"?

Now that is linked up with the previous point. Do you see that? Let us state it precisely. Filmer says the reference in which the sons of Noah were held is proof of this and this. To which Locke answers—the reverence in which men are held doesn't prove anything. And he gives here several examples. If we follow the simple rule and look at the fellow in the center, we find Tamerlain. You know who Tamerlain was?—a very cruel conqueror. That men admire that doesn't mean anything about his deserving to be admired. That is the point. There mere fact of admiration doesn't prove anything.

Father Buckley also referred to Locke's version of the Tower of Babel on page 105 (paragraph 146), where there is not the slightest reference to not only the implication but the gist of the biblical story—that this was an act of pride, and, therefore, the dispersal was punishment. They were obviously very sensible people. "They built it (the tower) for themselves as free men," (page 105, center of paragraph) "not as slaves for their lord and master." You see the ambiguity of that. Their lord and master is not merely the earthly king to whom they were not subject. The very act of rebellion against God shows they were free men. He continues

"that we be not scattered abroad," having a city once built and fixed habitations to settle our abodes and families.

There is something else. Let us look on the next page (page 106) and read from the beginning of the page.

Would it not be an argument just like this, for monarchical government, to say, when any monarchy was shattered to pieces and divided amongst revolted subjects, that God was careful to preserve monarchical powers by rending a settled empire into a multitude of little governments? If anyone will say that what happens in providence is to be preserved, God is careful to preserve as a thing therefore to be esteemed by men as necessary or useful--it is a peculiar property of speech, which everyone will not think fit to imitate.

You see that refers again to the problem of providence--"that what happens in providence to be preserved" is good. Whatever happens, how was it put, whatever is, is good. That is, according to Locke, the meaning of the doctrine of providence. Now if that is so, the distinction between right and wrong is impossible. And that is somehow, in a way in which I have not been able to find out, but I believe one would find, if one could understand it properly, this is what Locke is driving at. From the biblical premise of the creation of the world by an omnipotent God this consequence necessarily follows. That, I believe, is what he has in mind. I am not able to elaborate that.

Only a few more passages. On page 109 (top) where he says "I challenge any man to make any pretence to power by right of fatherhood either intelligible or possible in any one otherwise than either Adam's heir or as progenitor over his own descendants naturally sprung from him." That is a remarkable statement because he admits that within certain limits Filmer is rational. I mean, starting from the principle that power derives from right of fatherhood, there are two ways only, Locke says--he uses very strong language, i.e. "I challenge any man." The consequence from this is either the non-Filmerian version, i.e. that every father is the ruler of his own descendants and that means, of course, the abolition of political government since there can be only rule of fathers, heads of families and soon, but if there is to be political government, then it can only be in the form of Adam's heirs. That is what Locke asserts. That is very remarkable. Filmer's assertion is a reasonable conclusion from the false premise that all power is derived from the right of fatherhood. What is here implied?

(That the father of the family would be a king.)

Yes, but that is incompatible with political society. But why could there not be many kings? Why could there not be many kings, all heirs to Adam? I had an argument, but I see now that it is better than I thought. Under one condition, that the division of the human race into nations is unnatural. Then there can be only one ruler, that is, a political ruler as distinguished from the ruler of a mere family. And who said that?--that the division of the human race into nations is unnatural? Who said that?

(Rousseau.)

No, no. That I ^{saw} only at this moment. The Bible. The Tower of Babel. The division into these seventy odd nations is a punishment. And that confirms my suspicion that what Locke is driving at is this--that while Filmer was a very great fool, his ultimate presuppositions were the biblical presuppositions, and it is these biblical presuppositions the criticism of which is really important to Locke. Filmer represented only a very limited

Locke

thoroughly

ANSWER

family

nation

- Monarchy

- Political rule

and negligible point.

I think in paragraph 150, where he discusses the situation of the children of Israel in Egypt. Filmer had said: "In Egypt the exercise of the supreme patriarchal government was intermitted because they were in subjection to a stronger prince." Here Locke raises this question. What about Pharaoh? He ruled; there was a king. So what entitles Filmer to say that the patriarchal power was intermitted while the children of Israel were in Egypt. The tacit premise is that the real monarchy is only the Jewish monarchy or its successor, the church. That is, I think, also another part of the argument by which Locke links up Filmer's allegedly broad political doctrine to a very strict biblical doctrine. Let me see. There is some ~~evidence of~~ that. I read to you a few passages from page 110:

The exercise of patriarchal jurisdiction, if patriarchal be regal, was not intermitted whilst the Israelites were in Egypt.

Because the Pharaoh ruled. Later on, Filmer implies that

the exercise of patriarchal jurisdiction were intermitted in the world whenever the heirs of Jacob had not supreme power.

Therefore, the doctrine which Filmer gropingly and blindly asserts really means a universal monarchy of the elected people or their successors, the church. You see also this remark toward the end of the paragraph: "But one cannot easily discover in all places what his discourse tends to. . . ." That toward which Filmer's discourse tends is something different from what he explicitly teaches. The explicit teaching is simply the establishment of absolute monarchy in the world. But without his teaching, by virtue of the half-biblical basis of that, he is driven to accept the whole biblical doctrine with its implications, the implication being one government of all men under God. That is the real true and just government. We can say a temporal and spiritual government of all men, and that is really the subject with which Filmer is concerned.

(I was wondering how strong Dante's views were related to this. I was wondering why ^{Locke} he should be so concerned about this is this question of a universal monarchy was really not so strong.)

A universal monarchy in the sense of a universal temporal monarchy was, of course, not practically sound. But what about the claim of the church, the Catholic Church? Universal, isn't it. Now if that is so, and if the argument of the locus of sovereignty is admitted, if you have two powers, two independent powers, and the power which in borderline cases can decide is the sovereign, then it follows necessarily that the Catholic Church claims universal sovereignty. But here again I refer to Hobbes' argument stated clearly toward the end of the Leviathan--that Presbyterianism raises the same issue which the Catholic Church had raised, namely, the dualism of power. If you had the simple solution which the Lutherans and the Anglicans had--by identifying the head of the church with the head of the state, the problem would be at least concealed. But both from the Catholic and Presbyterian point of view, where you had an ecclesiastical power independent of the political power, the problem is sovereignty (2). obvious.

And, therefore Hobbes says in a way Presbyterianism is a greater danger, I have forgotten now what he said precisely, is a greater danger to peace than is Catholicism. So the problem was there. In the narrowly political sense *as he written only a pamphlet for the year 1650 where* this problem would not have arisen. But he is, of course, after bigger game. He wants to lay the foundation for a rational political doctrine which should give an entirely new direction to human affairs. And therefore he was compelled to raise the fundamental question, even if the fundamental questions in a certain form were no longer ordinarily raised. They were dormant.

(Of course, he had commented after James' . . .)

So, in other words, the problem of Catholicism was by no means completely alien to this period. But I think to that extent it gave him a possibility of appeal to prejudice and this kind of thing. That is true. But the issue I think is deeper. As for Dante, of course you must not forget the end of the Divine Comedy; you must not forget that the greatest imitation (?) of the Divine Comedy was made in Locke's lifetime, Paradise Lost. So in a way Dante was present. But I have no reason to assume Locke had read Dante. I am not aware of that.

To repeat, then, the universal secular monarchy was not the question, but the universal spiritual monarchy which, however, under the premise of the doctrine of sovereignty means it is at the same time temporal. I mean, if you take that together, then the issue is clear.

There is one other passage which is mentioned when he speaks on page 113, paragraph 158, of the judges: ". . . these judges, who were all the governors they then had, were only men of valour whom they made their generals to defend them in time of peril; and cannot God raise up such men unless fatherhood have a title to government?" Which on the face of it would mean, God raises up such men; he being the cause of all natural things, through his creative work, such men appear. But that they got their legal power they owe to their election by the people.

(He does that again in paragraph 167, that Filmer will "by no means allow they were chosen by the people.")

Yes. In this respect Filmer is much closer to the biblical text than Locke. Of course, Locke's argument is complex. A part of it is of course simply an attempt to give the biblical passages a twist in the direction of his teaching, which was doubtless done by many theologians, . . .

I refer you only to the single reference to this two thousand or three thousand years, referring to the story of Abraham, and the simple chronological and arithmetical calculation which shows he did not believe in the Mosiac authorship of the Pentateuch. And that, in the case of the 17th century, meant a rejection of the authority of the Pentateuch. And today for the liberal theologians it is completely settled. In Catholicism it is a bit more complicated because the verbal inspiration is not in that sense required as it was required by Protestantism and as it was also admitted in the Jewish tradition.

Now I made a number of apologetic remarks with a view to the theological problems and problems of biblical exegesis which came up because I don't

know whether I did not insult some of you by these apologetic remarks, but I had to consider the prejudices ruling in our time. But I would state it again. If we have to understand Locke, or if we have to talk of Locke, and are self-respecting people, we must study him, and then we must go into his arguments, even into those parts of his arguments which today are despised by the majority of our profession. Is this understood? I see now another way. One can say, as some people say, as this advanced majority says, these are old fogies more or less, and why should we read them? That is another matter, and I think one can also argue that out if this were the proper time for it. But once it is admitted that a self respecting social scientist should know something about what Locke meant and wanted, then one must even go into these passages and must even look up the Bible. And I think one could even refer to a greater authority of these gentlemen, namely, Max Weber, who took the trouble to learn Hebrew because he felt certain very important questions of sociology could not be solved on the basis of the translations but had to be done on the basis of the originals. So I think we have a very good case for our proceedings. (ure)

But to come back to the broad problem, I can only refer to what I said at the beginning. His two fundamentally different notions of natural law, the pre-modern and the modern, and this pre-modern notion of natural law, while not being identical with the biblical teaching is certainly akin somehow to the biblical teaching. And therefore, what? The mere philosophic natural law teaching did not have the authority which the biblical teaching had. Think of those many protestants who looked askance at anything brought over through scholastic teaching. The authority of bible as bible was always greater. Therefore the new natural law teaching, being radically opposed to the biblical teaching, had to face it some way. That is what Locke has done in a very obscure way in the First Treatise. If one would understand the First Treatise thoroughly, as I believe no one I know of understands it, then one would see Locke's specific argument against the biblical teaching. It comes to the fore for a moment as it were, for example, in this reference to providence to which I referred. Now is there any point which you would like to raise. Because from now on there will not be very many references to biblical passages. But don't forget that the silence about the Bible is as much, as important....We have here a political treatise in which, if my memory does not deceive me, the classical passages regarding government and authority from the New Testament, e.g. Give Caesar what is Caesar's and Be subject to the higher powers, are never quoted. The key passage from the Bible which Locke quotes is a passage from the Jephthah story. Do you remember it now?--an appeal to heaven. How is it worded? Well, in a case of conflict, in a certain political division (situation?), nothing remains but a peal to heaven . . .

(The lord judge between us.)

That is the key passage, and that is taken from a passage in international revolution, and Locke makes it the key passage for domestic revolution. But the two crucial passages, Give to Caesar what is Caesar's and Be subject to the higher powers, are never referred to. That the former could not suit Locke appears from the most important practical teaching of the 17th century, i.e. No taxation without representation. Of this Locke says it is ~~the~~ one of the most important principles of natural law. And he also says in his Reasonableness of Christianity the whole natural law is presented in the New Testament in perfect clarity. One should, therefore, find in the New Testament a statement "No taxation without representation" but we find exactly the

opposite. In other words, it is not merely the quotations of the Bible but also the silence on biblical passages which could reasonably be expected in the context which has to be considered. Since knowledge of the bible is today extremely thin, there is a simple help and that is Locke quotes Hooker. And it is extremely wise, even necessary, to look up the quotations in Hooker's context and there you will find all kinds of observations which Locke omits. And then you will see the real extraordinariness of Locke's teaching... That was generally his act. By quoting Hooker he creates a perfect propriety, but then he does not quote Hooker when he agrees with Hobbes'... And much of the so-called history of ideas is, of course, just a victim of Locke's cleverness or however you call it.

(In making the distinction between the two types of natural law teaching you mentioned that the modern form is based on a demonstration.)

I used the term.

(But there are cases in which Locke speaks of self-evident truths, things which do not need to be demonstrated.)

Very well. But what are these self-evident truths?

(You mean that they are based on reason, human reason, or . . .)

The point is this. If I take the Lockian example--where there is no property there is no injustice--that is, from Locke's point of view, self evident, an analytical proposition as some one said today. If you analyze injustice you see injustice means to interfere with what belongs to another man, his possessions, his body or whatever it may be. And, therefore, without property there is no injustice. That's it. That doesn't tell you a word about why should there be property or why is injustice bad. For this purpose we have to go back to the fundamental principle of self-preservation. But this principle of self-preservation is not in itself or simply a moral principle. The moral principles rather follow from this fundamental inclination or desire of man. Namely, if you reflect that in order to preserve yourself you need peace or society, therefore the question arises, how must your attitude be so that it is conducive to peace and society. This is the place of morality according to Hobbes and Locke. But you see, morality is somehow deduced from something which in itself is non-moral. That is the concrete meaning of the statement that it is demonstrated. Morality is deduced from something which is in itself amoral, which does not mean it is immoral. That is the meaning of that. Whereas, if you speak of the conscience giving you principles, then you imply there are self-evident moral principles. I repeat again the statement of Locke. The laws of nature, that is to say, the moral laws, are but conclusions. They don't have principles of their own.

(Indistinct)

Yes, sure. You presuppose here a theological basis of the whole teaching, and that is exactly the question. I mean in the case of Hobbes it is obvious that self-preservation is not traced ultimately to a creator and the will of a creator. It is just there. That is a question, i.e. whether Locke, who always uses theological language, much more than Hobbes does, whether that is really meant seriously by Locke. On the basis of our discussion of the Essays on the Law of Nature as well as some other passages which we will see partly in the Two Treatises, I am extremely doubtful. Locke tried to present a natural

law teaching which was not based on the acceptance of the existence of God. I
know, of course, that at first glance the opposite is true. You will see that
immediately when we begin to read the Second Treatise. But the question is whether
this is not a kind of adaptation to the then prevalent view which was necessary if
he wanted to get any hearing. That is a long question.

(End of Lecture)

. . . In other cases your paper seemed to be somewhat vague and speculative? Now let me see. Did you not say at the beginning of your paper that political power is in Locke as large as in Filmer,

(Yes, this is based perhaps on my own ^{category} ~~categorical~~. The power being as full as the right to inflict death allows it to be, yet the right to use it, there being a limit that will later be imposed upon it, the right deriving from who allows it to be used. (Trans. note: This appears confused but represents the statement.)

Is this not a somewhat strange measure, i.e. capital punishment. Is not from this point of view practically every government (up to a short time ago) as absolute as any other? I mean you find capital punishment even in the mildest regime as well as in the most ~~tyrannical~~ one. You cannot take the existence or non-existence of capital punishment as the yardstick of freedom, because there was a time when even the Soviet Union had abolished capital punishment. You know, that is a too Hobbeian point of view--to take killing as the only standard of judgment. That won't work.

We will take up the question of the quotation from Hooker later on in the proper context. But you made one point which I found very good, although you didn't follow it up. You said that in the state of nature according to Locke everyone has the right to enforce the law of nature, but he must do this conscientiously. And thus he must not, say, inflict death for a minor theft. That would be unfair. Locke means that it would be unfair. There is no proportion between the theft of a turnip, for example, and the life of a man. But then you raised the question: Who will enforce this moderation, this temperance, if there is no other enforcement by human enforcement. Well how does Locke argue from here on? First we have the right of everyone to enforce the law of nature. This must be, because that is the only enforcement possible. That is the implication. And now we get into trouble again, because the law of nature must be justly enforced. Who will guarantee just enforcement? So we need another principle beyond the right to enforce the law of nature. That is really the argument of Hobbes here. He must find another legal principle beyond those (Locke?) mentioned up to now. What is that? You said it in your paper more than once, but you didn't lay bare the precise connection. To repeat. We have first the right to enforce the law of nature. Then you will need an enforcement of the just enforcer of the right of nature, ~~that is~~ the law of nature. What is that principle to which he appeals then.

(It appears to be conscience.)

Yes, but conscience leaves us with the same trouble. But there is another principle to which he refers in this second chapter, apart from the right to enforce the law of nature.

(The convenience . . .)

No, no. He makes a clear distinction between two rights. The first is the right to enforce the law of nature, and the second?

(Well, if everyone is equal, perhaps . . .)

But here he speaks explicitly of two rights. The first regards the enforcing of the law of nature, and the second?

(Reason.)

That is implied in both.

(Reparations.)

The right to demand reparation. You see, the right to enforce the law of nature applies as well to the spectator of a wrong as to the sufferer of wrong. And therefore, he brings in now the right to demand damages, and indicates that it belongs entirely to the sufferer and not to the spectator. So self-interest comes in here. But still, will self-interest guarantee fair treatment of an enemy?

(If it is not beyond his power to . . .)

So, in other words, it is absolutely necessary that the state of nature ^{should} become a state of war, because there is an intrinsic possibility of theft, not to speak of murder... But to follow the argument more precisely. Locke creates first the impression of a perfectly peaceful situation where an injustice is committed only extremely rarely, and then everyone, out of a sense of justice, without thinking of his own interest, does justice to the offended. But then we see that if there were no selfish motives, the demand for the reparation of damages, the whole thing wouldn't work. But in the moment this is indicated, it also becomes still clearer that you cannot expect here any fair, just treatment of offenders. And then it is a state of war.

Now let me see. You spoke of Locke's theology, which is as good a term as any other. And where does the alien come in?--in your version of Locke's theology?

(I may have overstressed that . . .)

Well, it is very dark and I would be grateful for any help in that.

(The alien finds himself in a foreign land, and he is in ignorance of the laws of that land. Therefore, the binding force of knowledge is not on him. But secondly, since he is not one of that group of people, or possibly for additional reasons, he is not bound to follow the laws either. Because first they are not known to him and . . .)

But does Locke, for example, imply that he is ignorant of those laws?

(No, it doesn't necessarily say that.)

The question is why can a government punish an alien. And Locke's answer is: it cannot punish the alien on the basis of positive law, because there is no subjection of the alien to the government. This is a very arbitrary assumption he makes here. Hence the right to punish the alien is based entirely on natural law. That serves the purpose of establishing the view that there is a natural ^{that} right to punish. ~~the~~ right resides by nature in man. It is possible that there is more behind that, but I don't know. Perhaps we take this up at a later stage.

Now let us turn to the beginning of the Second Treatise. In the first paragraph, as you see, Locke summarizes the result of the First Treatise, and we can state the argument perhaps as follows. The fundamental alternative is whether a distinction between right and might ought to be made or not. One alternative being that right is identical with might. That is rejected by Locke as it is rejected by Filmer, and we can say by most political thinkers. So the question is,

then, how the distinction between right and might, between legitimate and illegitimate government is to be made. And that is a point of controversy between Locke and Filmer. But this is already an assumption--that such a distinction between right and might must be made. What is the argument, which Locke implies somehow against the thesis that government is simply the rule of the stronger of the individual or group stronger than the others in the society? What is the argument against that?--which Locke implies? In other words, he who has the power has it and exercises it, and there is no criterion by which the legitimacy or illegitimacy of that power can be judged. You cannot go behind the factual possession of power.

(It would lead to perpetual revolution.)

Yes, if the government is not strong enough. But if they are very tough, they can keep the people down for a very long time. But I think the thought which Locke implies is this--that government is meant to serve a function. Or, more elementarily stated, there is need for government. Government is not something which just happens. But there is a need, man needs government. And this need is the standard. That, of course, does not suffice. But you have to go back to that. The need for government means immediately the question of the function of government, and therefore the possibility of a distinction between a government which in principle fulfils the function of a government and a government which does not fulfil the function of government. Something of this kind I think is ~~in point~~. But it is more interesting, perhaps, to see that Locke suggests that the alternative to his teaching is Filmer's teaching. The whole work is built up in that way. Either you accept what Locke is going to say or you have to take this great folly of Filmer's. Either natural freedom and equality or natural subjection, i.e. fatherhood, as Filmer put it. Now this alternative was, of course, suggested by Filmer himself. You will recall that Filmer himself says that most people up to now, most political thinkers, had said that all men are by nature free and equal, even the royalists, even Aristotle is not completely sound on this point. So this issue is: Do you admit natural freedom and equality or do you deny it? Filmer denies it. And Locke says, alright, I am willing to accept that challenge, and start on the basis of natural freedom and equality. So in Locke's presentation we see this--that a novel teaching, like Filmer's, which favors slavery opposes the common sense of mankind, which was always liberal. And, of course, Hooker and then the Scholastics . . . Aristotle occupies a somewhat ambiguous role in Filmer. For Filmer Aristotle had some good points, e.g. the admitting of slavery as legitimate, but on the other hand he was not strong enough on fatherhood. By making a distinction between political government and domestic or family government, Aristotle gave the principle away.

But we must consider for one moment in summarizing the things which we have discussed before, what is the precise relation between Locke and these, this tradition to which he refers. Now let us look at this graphically. (Writes on blackboard) Here we have Filmer. We regard him here as a complete outcast, because he is absolutely wrong. And then we come, say, to Hooker, to whom Locke refers--a respectable Anglican divine. And then we put Locke here. But, of course, Locke never speaks explicitly about the differences between himself and Hooker. And we can identify, for all practical purposes, Hooker with Thomas Aquinas. The differences are absolutely irrelevant in this context. What is the fundamental relation of Locke to Hooker and Thomas Aquinas as far as it has appeared from the previous discussion of Locke's useful essays and, to some extent, from the First Treatise. Of course, we must keep this in mind. If we try to under-

stand the Second Treatise, we must still read the Second Treatise by itself.

(He has abandoned that concept of natural law.)

Or, to put it more cautiously or timidly, the Hooker-Thomistic concept of natural law has become obscure in Locke. That is safe to say. But what about Aristotle, whose teaching is not identical with that of Hooker and Thomas, to say nothing of Locke. Now that does not appear from the writings which we have been studying, but in his Reasonableness of Christianity Locke makes it quite clear how he stands to the ancient philosophers in general and by implication, to Aristotle in particular. Now in the first place he says of the ancient philosophers that they didn't speak much of God in their moral teaching. Their moral teaching was not a theological teaching in any sense. Secondly, and this is more important, the ancient philosophers regarded virtue as choiceworthy for its own sake. Or, as he puts it in his harsh language, they left virtue unendowed, i.e. there is no premium for being virtuous. Whereas, in the theological teaching, according to Locke, there is such a premium in eternal life. The ancient philosophers did not do that, and we get here already an inkling as to what Locke will do. Locke will find an endowed version, and endowed on this earth, to supplement that -- A characteristic which will distinguish it from that of Aristotle.

Now this much about the first paragraph. And now he thinks it is necessary immediately afterward to define political power, lest the confusion of political power and paternal power which Filmer has made be continued. Now let us look at this definition of political power.

To this purpose, I think it may not be amiss to set down what I take to be political power, that the power of a magistrate over a subject may be distinguished from that of a father over his children, a master over his servants, a husband over his wife, and a lord over his slave.

Do you notice here anything ⁱⁿ this enumeration?

(These are all natural . . .)

No. But this distinction of the five powers I find already in Bodin. This I mention only in passing. This distinction is not characteristic of Locke. But does he not enumerate them in a strange way? Would not a father belong together with a husband? And why does he insert this master-servant relation. I would say it is more natural to say "a father over his children, a husband over his wife, a master over his servants, and a lord over his slave." This places "master over his servants" in the center of the enumeration, and I believe that is perhaps of some help for getting at Locke's theology, as you call it. To put it briefly, -- To understand the relation of God to man not as the relation of a father over his children nor as that of a lord over his slave but as a master over his servants. In other words, it is an extremely limited rule. We will see later on when he speaks of this difference. But this only in passing. Now how then does he define political power in the sequel?

Political power, then, I take to be a right of making laws with penalties of death and, consequently, all less penalties for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in the defence of the commonwealth from foreign injury, and all this only for the public good.

Now the emphasis is first, as you see, because the penalties, that goes without saying, once you have laws you must have penalties. And, of course, also the penalty of death as the highest penalty. But could it not be that political

power is here defined primarily as the power or right of making laws . . .

(Break in tape)

. . . political power is primarily the legislative power. That is characteristic of political power. When he speaks later on of the executive, you see he says "of employing the force of the community in the execution of such laws." The executive power is strictly subordinate to the legislative power. And naturally he has to add the other power, which is not legislative nor legislative strictly speaking, "the defence of the commonwealth from foreign injury", what he later on will call the federative power. We will come to that later. But still, what is the purpose of all legislation. Here we come to the characteristic Lockean assertion. With what is legislation concerned, all legislation, according to Locke? He says that. Making laws for what purpose?

(Regulating and preserving property.)

That is decisive. That is the characteristically Lockean definition of political power. Property has a wider and narrower sense in Locke. It may mean only property as we ordinarily understand it; it may also mean life, liberty and property. Nevertheless, the choice of the term property points to property proper, and not to life and liberty. I mean that is usually not such a great problem--that life and bodily liberty should be preserved and regulated. The exciting (exciting) and interesting problem concerns property narrowly understood. And we will see later on that this is exactly what Locke means. What alternatives could we think of, alternatives to the object of legislation? What about the welfare state? How is this related to Locke?

(Well there are other things such as education, etc. which make up subjects for . . .)

But let us first take, for a minute, the welfare state.

(It depends on how narrowly you would define property, in the wide or the narrow sense.)

Does the welfare state, as such, also regulate and preserve property. Some opponents of the welfare state say that it destroys property, but it certainly regulates property. And in its way it also preserves property. It preserves the property of the propertyless, to exaggerate a bit. So there is really no essential difference here between the welfare state, but as Father Buckley pointed out, the alternative would be such things as education or, to use the Aristotelian language, virtue, or religion, for that matter. All these other goals are tacitly disposed of. ~~Altogether~~ Only property and its necessary implications, i.e. life and liberty, belong to the province of political power. But all "this only for the public good." Why does he add this at the end? Does it not go without saying? For example, "in the defence of the commonwealth from foreign injury" is this not necessarily for the public good? And the same applies also to the regulation and preservation of property. Why does he add that?

(Indistinct.)

But still, for the regulation and preservation of property means, of course, not the property of all.

(Indistinct.)

How?

(Property in the sense that everything belongs to the king.)

Oh, I see. That is possible. But also this other point is to be considered. As will appear later on, Locke admitted the necessity sometimes to rule without law, that is, in certain situations. Now in these cases there is still a standard limiting the exercise of political power, and that is, "for the public good." In other words, it is sometimes necessary to transgress the law for a conscientious government, but that can only be for the public good and not for the private good of the ruler. At any rate, the public good is of the greatest importance as is indicated by the motto of the whole work, "Salus populi suprema lex esto." The safety of the people, the well-being of the people should be the supreme law. That is an old formula, but it takes on a special importance in Locke because of the famous "individualism" of Locke. Because it is not the safety or well-being of the individual which is the supreme law, but the safety of the community as a whole. And that is a question which we have to watch. To what extent does Locke provide for the safety of every individual as distinguished from the safety of the people as a whole. So after having defined political power here . . . What did he achieve by this definition? That is of some importance with a view to the present day discussions about scientific teachings. Locke defines here political power, just as Lasswell defines power or the various subdivisions of power. What question arises here after Locke has defined what political power is? The definition is sufficient, but quite a few questions, of course, arise. For example, why does he say property and not virtue? Why does he make the executive entirely dependent on the legislative, and all these kinds of questions. So the definition needs a justification, doesn't it? In other words, a mere definition is no good at all. You must really show reasons why this definition is preferable to any other definition, why it is really an adequate definition. To answer this question Locke writes the sequel, especially the next chapter. In order to understand political power as defined and see that it is necessary and derive it from its original, as Locke puts it, we must go back to the state of nature. By looking back to the state of nature we will understand why political power in the sense defined is necessary and, secondly, in whose hands is the political power. Granted that this is political power as he defined it, it is still a question in every society who ought to exercise it and who ought to possess that power. That could be possessed by a usurper as well as by a legitimate ruler. We must go back behind the positive, the arbitrary and accidental, to the essential.

Political power is allocated in every society to given individuals or to a given man or body of men. But the question arises, with what right is this done. That is positive. This given society in fact allocated power to these and these people. That is arbitrary in itself. In order to understand the legitimacy of a given arbitrary action, we must go back to the non-arbitrary, to the natural. And one way of doing that is to go back to the state of nature. This term was used already before by Hobbes, and Locke simply takes it over with some modification. What is the state of nature as Locke understands it. The state of nature is a state in which men are subject only to the natural law. For positive law, being the work of a political society, presupposes political society. The state of nature would be a state in which political society does not exist and therefore a state in which only the natural law could be a law for man. But why is this state of nature, as Locke calls it, a state of perfect freedom? Because if man is subject to the natural law, why is it a state of perfect freedom? In other words, why does Locke lay greater stress here on the freedom than on the subjection to the natural law. Perfect freedom. That could mean no restraint whatever. Well, perhaps we will find that this subjection to the law of nature is not so very important or incisive as it seems to be at first glance. You see that Locke also calls it a state of equality. But in the first place he calls

it a state of freedom, a state also of equality. Why does he do that? Why does he speak first of freedom and then of equality?

(It seems that basically it would include that.)

Freedom and equality are frequently mentioned together, and have been by broad tradition been mentioned together. But Locke suggests here an order: freedom first, equality afterward. Why does he do that? Does the equality follow from freedom?

(Well, if men are naturally free, then they are by nature free from subjection to others.)

In other words, freedom means perfect freedom from subjection to others. And if every man is free from subjection to any other man, then all men are equal in this respect. That is what you said?

(Yes, and this might reflect upon what he means by subjection to natural law. That this subjection is really a subjection to one's own will. So this again would reflect upon the equality of everyone.)

I do not see clearly how this fits in with your first suggestion, which I understood to mean that by speaking first of freedom he makes clear what equality can mean in the context. That equality does not necessarily mean an equality of natural gifts, for example. But means only that equality which is the reverse side of absence of subjection of man to man. Perhaps we leave it at that.

You see Locke's procedure. He makes this assertion regarding the state of nature. He asserts that, but it needs some proof, doesn't it? I mean, for example, we have to clarify the relation between this equality which Locke admits and the natural inequality which he cannot deny, although he is silent about it. So we need some proof. In what way does he give a proof.

(Well, in spite of the fact that man may be gifted in intelligence, nevertheless, a brutish man could slay him.)

Yes, that is Hobbes' argument. But what does Locke do? Nothing like looking into Locke to find out about that. Look at the beginning of paragraph 5.

This equality of men by nature the judicious Hooker looks upon as so evident in itself and beyond all question that he makes it the foundation of that obligation to mutual love amongst men on which he builds the duties we owe one another, and from whence he derives the great maxims of justice and charity.

And so on. So, in other words, his argument, or his proof, is a quotation from Hooker. But it is interesting that the quotation from Hooker is meant to prove the equality, not the freedom. So that he would have to argue as follows. If Hooker establishes the equality of man, then we would have to infer from that equality the liberty, which he can easily do. If all men are by nature equal, no man is by nature subject to any other man. Then all men are by nature free in a sense, free from any subjection to any other man. But you see then he quotes Hooker (and you made some good remarks on this subject), but let us look at the context in Hooker. Now the context is this. It is a discussion of natural law. I cannot read the whole thing, but I read the beginning:

Touching the several grand mandates which being imposed by the understanding faculty of the mind must be obeyed by the will of man, they are by the same method found out, whether they import

our duty toward God ~~or~~ toward men.

And then he speaks of the duty toward God and quotes "Thou shalt love the Lord thy God with all thy heart, with all thy soul, and with all thy might."

which law our Saviour doth term the first and the greatest commandment. Touching the next, which as our Saviour added, is like unto this [and then comes the quotation which Locke gives]

In other words, in the first place Locke omits completely the duties toward God and he also changes somewhat the meaning of the quotation, as becomes clear if you compare Locke's own remarks with Hooker's context. By proper emphasis one can bring this out: "This equality of men by nature the judicious Hooker looks upon as so evident in itself and beyond all question that he makes it the foundation of that obligation to mutual love amongst men on which he builds the duties we owe one another, and from whence he derives the great maxims of justice and charity." All these things which Hooker does are not done by Locke. Locke is only interested in the conclusion which verbally agrees with his assertion--all men are by nature equal. The whole natural law context, the teaching of the duties of justice and charity, have no place in Locke's teaching proper as will gradually become clear. Hooker is concerned with knowledge of duties. That is the reason why he speaks of equality. Locke is concerned with the equality, which is an entirely different proposition. Now let us read the beginning of the next paragraph.

But though this be a state of liberty, yet it is not a state of licence; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it.

Can you explain to me the end of this sentence? That man has no right to destroy himself, that is intelligible. That he has no right to destroy any creature in his possession, let us say, a lamb, not to speak of a fly. Any creature. He doesn't say any human creature. But now what does the end mean--"but where some nobler use than its bare preservation calls for it." Its must refer to creature; it cannot refer to man. What does that mean? Does anyone have another edition, with a different reading perhaps? I didn't look it up. It is a very strange thing. Let us assume he meant by this his bare preservation. But why should man not be entitled to kill a lamb if no other purpose is involved than man's bare preservation. It could, of course, refer to the state of man prior to the Flood, in which man was not yet allowed to eat meat. And then it would be a reference to the problem of the relation between Locke's state of nature and biblical history. But then we have to change the text, which is a very hard thing to do. Do you have an idea?

(Just a suggestion. Could it not be that all Locke means by this qualification at the end of the sentence is that if you talked of a sub-human creature and Locke also could talk of a sub-human creature. (?) Therefore, the purpose of man would be a nobler purpose than the bare preservation of its being. He is attempting to rule out destruction for its own sake.)

But still, who is meant by its?

(The creatures, the destruction of any creature simply for the sake of destruction.)

Yes, but "Its bare preservation" is not enough. For example, what about a lamb and a wolf. He tries to preserve the lamb against the attack of the wolf. And there is no nobler purpose than the bare preservation of the lamb. It wouldn't work. The wolf would not be applicable because it is not a creature in its possession. I really don't understand it. But you had an idea?

(I was going to suggest that I thought that was the meaning of it--that even there you would be justified in killing the wolf so that you could eat the lamb when you needed to. In other words, that every aspect in nature could lead to the self-preservation of man as a higher . . .)

I see. Well it is perfectly sensible, that is, the eating of the lamb rather than the mere preservation. That makes absolute sense. But you think it even of the case of the wolf and the lamb. I don't believe that, because the wolf is not a creature in his possession. It is a hard passage; there is no question of that. And perhaps one has to see what the critical edition of Locke, which is expected sooner or later, will say on this passage.

(Couldn't there be some slight irony about nobility, the possibility of nobility?)

I see. Yes sure, that would be nobler. But the irony would still be there because Locke would find it somewhat funny that man's self-preservation is in a way, from his point of view, nobler than the self-preservation of the lamb. That might be. But is this really a good and sufficient explanation of the passage? I wonder. I have never understood that. Even a joke must make sense. I do not know. Now if he would say this, as Mr. Goerner has suggested, that would make sense--man cannot frivolously destroy any creature, not even a fly. That would make sense; but that is not what he says.

(Indistinct.)

I don't believe that anything suggested up to now is sufficient as the real explanation of this section as stated by Locke. I advise you to give it more thought and see whether you can make heads or tails of it. At any rate, what he says obviously is that man doesn't have an uncontrollable liberty. He has not even the right to kill himself or anything. But here the point seems to be this, however. Bare preservation somehow doesn't seem to be sufficient. Now let us read the sequel.

The state of nature has a law of nature to govern it which obliges every one; and reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions;

Now watch here. You see here he does not identify the law of nature with the law of reason, but with reason. That is of some importance. Namely, that is, in connection with other passages, of some importance in order to understand the precise meaning the law of nature can have in the last analysis for Locke. Because, when he speaks of reason, you do not imply a law. But when you speak (we speak) of the law of reason, you would of course imply a law. That is of some importance. Namely, that remains a problem to what extent is the law of nature truly a law. Hobbes had said that the law of nature in itself is only a theory or conclusion, i.e. the law of nature is not a law. It becomes a law only if understood as the will of God, or, for that matter, if it is embodied in the positive law of the commonwealth. And something of this kind I believe is happening in Locke too. And you see he says it "teaches all mankind who will but consult." That is the first indication of the problem of promulgation of

the natural law. The natural law is known to all men who will but consult reason. Now whether this consultation is so simple that every man is capable of it remains to be seen. And now the sequel. But still, the content of the natural law is now clear, the negative point. No one ought to harm another man in his life, health, liberty or possessions.

for men being all the workmanship of one omnipotent and infinitely wise Maker--all the servants of one sovereign master, sent into the world by his order, and about his business--they are his property whose workmanship they are, made to last during his, not one another's, pleasure;

That is the passages which I saw. Here a distinction is made between man being God's property and man being God's servant. And we must see later what Locke says about the difference between servants and property. This passage to which you referred at the end of chapter four is here of some importance. It is possible that Locke here indicates a kind of theology, as we can call it, in which the relation of man to God is conceived of in terms of servant to a master and not property. In other words, if that is so man would have very definite rights over against God, whereas in the case of property as property, property does not have rights over against the owner. This formula, which of course occurs also in earlier times but takes on a very great importance in the late seventeenth century, for example, in Leibniz, in which it is said very forcefully that every soul demands from God with right that He pays due consideration to it. And that could be said perhaps to be implied in the biblical teaching, but it is there, of course, only implied. That here a creature of God as a creature, and with an intelligence, has a right against his creator because it is an intelligent creature is very forcefully stated by Leibniz, a contemporary of Locke, and something of this kind I believe is implied also in what Locke here indicates. But that must await further confirmation. Now let us go on.

and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us that may authorize us to destroy another, as if we were made for one another's uses as the inferior ranks of creatures are for ours. Every one, as he is bound to preserve himself and not to quit his station wilfully, so by the like reason, when his own self-preservation comes (delete) not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of life: the health, liberty, limb, or goods of another.

Now let us stop here. You see that is the first presentation of Locke's natural law teaching as presented here. There is a natural law, meaning, there are certain natural obligations or duties of man. And the duties can be reduced to one formula: man has the duty to preserve mankind including himself. There is no question at this stage of rights. Any rights would be derivative from this. But Locke makes here one qualification--"when his own preservation comes not in competition." So the duty to preserve mankind is qualified by the observation that one's own preservation comes first. I have a higher duty, a more pressing duty, to preserve myself than to preserve other men. And later there will be then the right to self-preservation as the basis of all these obligations. But we must go step by step. Now here we have the duty of preserving mankind. Now if I have that duty to preserve mankind, I have, of course, also the duty to do

everything necessary for preserving mankind. Now let us assume there are vicious men who would like to destroy as many men as they could. Then it is my duty to prevent them from doing so, and I may not be able to prevent him from doing so except by killing him. Therefore I have the duty to kill him. And in this stage of the argument there is no question whatever of my self-preservation or my self-interest. It follows from the duty under which I am to preserve mankind. And that he makes clear in the next paragraph (paragraph 7). To make the main point: everyone in the state of nature has a right to execute the law of nature. The law of nature dictating the preservation of mankind and, therefore, all such actions as are required for the preservation of mankind, i.e. to punish the enemies of mankind, perhaps by death. Why is this necessary?--that everyone should be by nature the executor of the law of nature? In the middle of paragraph 7 he says: "the law of nature would, as all other laws that concern men in this world, be in vain, if there were nobody in the state of nature that had the power to execute that law and thereby preserve the innocent and restrain offenders." So the natural law belongs to that class of laws that concern men in this world. There may be laws which concern men in the next world, e.g. the laws of religion perhaps; the law of nature belongs to the laws which concern men in this world. And these laws which concern men in this world require a human enforcement agency. That is the crucial point. The whole conclusion would not follow if the natural law were enforced by God. There may be such an enforcement in the other life, but Locke does not speak of that here. Locke demands that there be an enforcement of the law of nature in the state of nature by human agents. And that condition is not fulfilled if man does not have the power, if each man does not have the power, to execute the law of nature. Each man must have it because all men are equal, and therefore there is no reason why this right or duty should be assigned to some men to the exclusion of others. Now in order to understand this fully, which we cannot do here, one would have to read what Locke says in the Essay concerning human understanding regarding conscience. The enforcement by the conscience, that was the more traditional view, the bad conscience. This does not exist in Locke's teaching. And he gives the example of the spectacle of a city being sacked by a hostile army. He says there you don't see any conscience. The conscience is not something which all men possess in any effective way. Since there is no enforcement of the natural law by the conscience, there must be an enforcement of the natural law by men. If there is no enforcement, the natural law is not a law. A law is a law only if it is enforced, and if it is a law concerning men in this world, it must be a law enforced by man.

Now he pursues this further. He speaks, of course, in the sequel (paragraph 8, line 5) "so far as calm reason and conscience dictate." Surely the conscience may dictate that a petty theft should not be punished with death, but the question arises whether this dictate of the conscience will be followed by man and will he who will transgress that dictate of the conscience suffer from it, if other people do not make him suffer for it. Locke would say, perhaps, some people would suffer from ill deeds but others would not. And they must be made to suffer by other human beings. That is the only way in which the natural law can be effective. Now let us read the end of paragraph 8:

Which being a trespass against the whole species and the peace and safety of it provided for by the law of nature . . .

Here you get a more general formula for the law of nature as Locke introduces it here. The law of nature provides for the peace and safety of the human species. All those things are good which contribute to the peace and safety of the human race, and all these things are evil which affect adversely the peace and safety of the human race. The natural law, in other words, is a strictly social law. It has nothing to do with the improvement of the individual. It has only to do

with the peace and safety of the human race. That leads to a very grave question: What about war? What about the fact there exist a number of states which are potential enemies? Does it not lead to the consequence that war is altogether evil or, rather, to the distinction between just and unjust wars and the problems stemming from that? We will turn to that later.

... every man upon this score, by the right he hath to preserve mankind in general

because, if he has a duty to preserve mankind in general, a right derives from that

may restrain

but you see the transition from duty to right means a transition from must to may. Do you see that? If it were "by the duty he hath to preserve mankind in general" he "must restrain, or, where it is necessary, destroy . . ." But since the duty is now weakened to a right, the must is weakened to a may.

by the right he hath to preserve mankind in general, may restrain, or, where it is necessary, destroy things noxious to them. . . .

You see the delicacy of Locke. He speaks first of things and not of men, but note and we will find later these things imply other human beings.

and so may bring such evil on any one who hath transgressed that law, as may make him repent the doing of it and thereby deter him, and by his example others, from doing the like mischief.

Locke is collecting his courage until he will dare to say you may kill other human beings. Here he speaks only of the destruction of things noxious to men and of making men repent. They cannot repent if they are dead. Of course they could have repented at the last moment; I do not deny that. But he does not yet speak here of killing other human beings. We come to that. And in the final formulation at the end of the paragraph

a right to punish the offender and be executioner of the law of nature.

Not a duty. Originally it was a duty.

(Wouldn't it seem that, as you pointed out, the duty is diluted when he uses the word may, wouldn't this flow directly from the primacy of another duty, the duty to preserve one's self. And you may endanger yourself seriously in attempting to execute this against an offender against someone else.)

Yes, but I think the real argument of Locke, I mean if one would disentangle it, would be this. There is first a duty to preserve mankind, where your own case is a very unimportant and subordinate example. Then you have to defend mankind and you mustn't think of yourself. The self-preservation of the individual as the real root of the whole thing comes to the fore only very slowly. The first step we can say which Locke does is when he replaces the traditional natural law by a natural law whose sole content is the peace and safety of the human race.

(But he has already laid the basis for this in paragraph 6--"when his own preservation comes not in competition, ought he, as much as he can, to

preserve the rest of mankind, . . .)

But still, there is a difference whether something is said in a subordinate clause, and then whether it comes to the fore. Surely. But because this little thing, that his own preservation comes not in competition, is really the reservation one might say by virtue of which he will turn upside down this whole edifice of a law of nature which is formally of the same character of the Thomistic law, (as) but the content of which is limited to the peace and safety of mankind and nothing else. If we look back from the end we will see this--that the right of self-preservation cannot be safeguarded normally if there is not a state of peace. Therefore, the duty to preserve peace in order to safeguard the basic right of self-preservation. Now that theoretically would surely lead to a universal state with no possibility of war. But since this is absolutely impossible for practical reasons from Locke's point of view, you have to limit the practical demands to a domestic duty. And then have a generally prudent foreign policy which consists in making as few wars as possible. But I think that ultimately we come back to the self-preservation, although this takes some time.

Now we see at the beginning of paragraph 9 that Locke himself, who is so cautious and speaks so frequently of Hooker, draws our attention to the novelty of the doctrine. He says: "I doubt not but this will seem a very strange doctrine to some men." He is so incautious to say "very strange"; he could have left it at strange. In other words, that was a novel doctrine. You find some traces of it in Grotius, for example, in Book II, Chapter 20, Paragraph 387 and Book II, Chapter 25, beginning. For example, in the Summa, sec sec, ques 64, art 3, denies that a private person may kill a sinner. He is not speaking, of course, of self defence, which is another story. And similar remarks you find in Suarez, Treatise on Law, Book III, Chapter 3. The strangeness of the doctrine, the novelty of the doctrine is due to the fact that Locke demands a human enforcement of the law of nature independently of the civil government. In the Thomistic doctrine it is understood that the magistrate has, of course, such a power but not the private individual. Locke demands that every human being have this power because there is no other enforcement in this life except the enforcement due to human agents.

Now he then goes over at the beginning of paragraph 10 to another right which seems to be absolutely subordinate from the lofty point of view from which Locke starts. We have to think entirely of the peace and safety of the human race and not of ourselves. But, of course,

Besides the crime which consists in violating the law and varying from the right rule of reason, whereby a man so far becomes degenerate and declares himself to quit the principles of human nature and to be a noxious creature, there is commonly injury done to some person or other, and some other man receives damages by his transgression; in which case he who hath received any damage has, besides the right of punishment common to him with other men, a particular right to seek reparation from him that has done it: . . .

Now this right to seek reparation has a different status from the right to punish offenders on the following ground. The right to punish offenders applies equally to all men, to the sufferer as well as to the mere spectator. The second one applies only to the sufferer. Now what is the practical difference between these two things. Well you see Locke is not so sure that spectators of injustices will act on that. But if they suffer (that is his low view of man), if their land has been stolen, they will go after that fellow who has stolen

it. In other words, the right to seek reparation is rooted immediately in the right of self-preservation, whereas the right to punish, a universal law, is derivative in a much higher degree and therefore much less effective. And now you see why the state of nature must become a state of war. Because if this right to take reparation is the real indignation, anger, selfishness is involved, passion is much more present there than if you see and look objectively at a spectacle of an injustice and say, "This injustice must be punished." The state of nature becomes necessarily a state of war because of the passionate concern with self-preservation.

In paragraph 11 he continues the subject. The report said everything that has to be said about the two biblical quotations. Locke changed the meaning of the quotations completely by taking them out of the context. And especially is this true of the first: "Whoso sheddeth man's blood, by man shall his blood be shed." That Locke accepts, but he is silent about the sequel, for man was created in the image of God. Why does he drop that? --that man is created in the image of God? I mean, what is the practical meaning which follows from that? Well does he not compare these criminals to wolves, lions and tigers and other noxious creatures and forget completely the consideration that while they deserve capital punishment yet they might be deserving of a respect beyond that because they are human beings, because they are created in the image of God. The whole doctrine of self-preservation as Locke means it and executes it is incompatible with the notion of man being created in the image of God. So Locke is really consistent when he limits the quotation as he does here. We do not have to go into that. Lock is very tough. This part of the Lockean teaching has been played down by a grateful tradition. Gratitude is a great virtue but it also must be prudently and judiciously applied.

In the sequel (paragraph 12) we find an important reference to the problem of promulgation, where he says he is certain there is such a law of nature, "and that, too, as intelligible and plain to a rational creature and a studier of that law . . ." So that means not to man as man; you must be a studier of that law and, as we know from other writings of Locke, you must be a philosopher to know that. That is not the conscience speaking in you which tells you what your duties are; you have to do much more than that. And that, of course, means it is absolutely impossible for men in the state of nature to be a studier of that law, as will become clearer as we go on. And the law of nature must be known in order to be obeyed. There can be no natural law here in the state of nature. What there can be very well is, of course, the desire for self-preservation. That will be effective whether men know the corollaries to that right or do not know, because of the instinctive desire very powerful in every living being and therefore in man in particular.

Now another point which I would like to mention is in the next paragraph. Let us read that.

To this strange doctrine--viz., that in the state of nature every one has the executive power of the law of nature /you see he calls it again strange, so we cannot overlook that/ I doubt not but it will be objected that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends, and, on the other side, that ill-nature, passion, and revenge will carry them too far in punishing others, and hence nothing but confusion and disorder will follow; and that therefore God hath certainly appointed government to restrain the partiality

and violence of men. I easily grant that civil government is the proper remedy for the inconveniences of the state of nature, which must certainly be great where men may be judges in their own case; . . .

I have just one comment. You see the objection which he quotes contains the proposition "God hath certainly appointed government." In Locke's comment this is dropped, and there is no reference in the whole work to a divine appointment of government. Always the New Testament passages speaking of such a divine appointment are never quoted. Government is a purely human institution. Locke uses this opportunity here for drawing our attention to that.

Now we cannot possibly discuss everything. I note one point of the utmost importance in the next paragraph where Locke says, in effect, that international law (as it is now called), the law of nations is the natural law. The question is raised: Have there ever been men in the state of nature. And Locke says: Well at least societies, states are in the state of nature. Now in the context that means that if the states as states are with each other in the state of nature, they are subject only to the law of nature. The only international law which is binding, which is strictly speaking a law, . . . which at first glance looks like a binding law is the natural law as understood by Locke. That is again a Hobbean doctrine. All international law based on custom or agreement or something of this kind is at most derivative. The true natural, that is, international law is the natural law which commands peace and has therefore certain corollaries; for example, the war should not be conducted in such a way as to make peace absolutely impossible, and that representatives of the two parties should be peacefully treated and this kind of thing. That is of very great importance. Mr. Cox in his dissertation develops this at great length--the true doctrine of international law as Locke meant it. Again the result is, of course, much tougher than one would normally think. Because here again the priority of self-preservation applies to states as well as to individuals. The principles of prudent power-politics, as some people call it, follow necessarily from that principle.

(In his use of the term independent governments, couldn't that be interpreted as governments in themselves that are not dependent, that is, . . .)

For example, the local government of Chicago is not an independent government. It has to take orders from the federal government. Or, for example, a baron in a feudal government is not the head of an independent government. That he means. Why does he not call it a sovereign state? Locke doesn't like the word sovereign and he avoids that, but that is what he means. In case there is any doubt, on the middle of page 128 (line 7 or so): ". . . it is not every compact which puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community and make one body politic." So contracts between states which do not lead to a merger of those states, the subjection of both to one government like Egypt and Syria now, ordinary contracts between governments do not terminate the state of nature. That means in practice that each contracting party reserves a right of interpreting the contract. That would follow. Because there is no common judge who in the case of conflict, to whom in the case of conflict both are obliged to submit.

(Couldn't that also imply that a government which is an absolute monarchy is still a body politic in the state of nature?)

Yes, that is left open here entirely. What form of government there is in this individual body politic is left entirely open. You see in the next paragraph

there follows another quotation from Hooker, where he(Locke)refers explicitly to the authority of the judicious Hooker. But here he makes it clear that he deviates from Hooker, by saying at the end:

But I, moreover, affirm that all men are naturally in that state and . . .

Hooker hadn't spoken of the state of nature at all. Hooker had at most said that some men are accidentally in the state of nature. Locke asserts, on the other hand, that all men are naturally in the state of nature. To doctrine of the state of nature is the most obvious difference between Hooker and Locke. All the other things, e.g. that every man is the executor of the law of nature by nature, follow from that. Locke has made it as clear as he could without destroying the possible effect of his book that he is in disagreement with Hooker. But most interpreters and readers were not particularly interested in that difference and therefore they neglected this point.

(I am not entirely clear on the, that it was the force of his "so till by their own consents they make themselves members of some politic society." From what you have been saying, it seems that you are saying that even after a man is a member of a society, that this law of nature still has a basic operation.)

We come to that, but still he is no longer in the state of nature. I suggest this provisional answer. In civil society the law of nature obtains but is supplemented by positive law. In the state of nature only the law of nature obtains. As for the meaning of this particular remark, I suggest that we look at the end of paragraph 4, where we find a similar formulation. He says all men are "equal one amongst another without subordination or subjection; unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him by an evident and clear appointment an undoubted right to dominion and sovereignty." This he drops now, and not divine appointment but human arrangement, i.e. the social compact, terminates the state of nature. This is what he has in mind. And that is of course prepared by his silence on divine appointment in paragraph 13 to which I referred.

Now we come to the third chapter, "Of the State of War," which obviously has, of course, the meaning of an opposition to Hobbes. Hobbes had simply identified the state of nature with a state of war of everybody against everybody. Locke says no, they are fundamentally different. The state of nature is a state of peace where all men live in peace because they obey the law of nature. The state of war comes in only if one is so wicked as to hurt another man, and that seems to be a rare and very unlikely case. And therefore he has a clear-cut distinction between the state of nature and the state of war. And what is seen even in paragraph 16, that a state of war is a state of unprovoked aggression. So strictly speaking only the aggressor is in a state of war and I am, then, as the offended party, forced to do something which could also look like a warlike action. But primarily the state of war resides in the soul of the aggressor. You see, however, here that there is some reference, a strong reference to the right of my defence as distinguished from the defence of mankind: ". . . if being reasonable and just I should have a right to destroy that which threatens me with destruction; . . ." One may destroy a man who makes war upon him. He does no longer speak here of the spectators, who out of a sense of duty and only out of a sense of duty help the offended party. Here it is a question of self-defence rooted in the desire for self-preservation. He speaks here of a wolf or a lion. He may kill such a man for the same reason that he may kill

a wolf or a lion. In the preceding reference (paragraph 11) he had spoken of a lion or a tiger. Now what is the difference between lion and tiger and lion and wolf. I think it is very obvious. There were no lions and tigers in Britain, but wolves were there. Locke comes closer home in that, self preservation. That is at least the simplest explanation I can think of.

In the next paragraph (17) there is an important passages which we should read.

To be free from such force is the only security of my preservation; and reason bids me look on him as an enemy to my preservation who would take away that freedom which is the fence to it; so that he who makes an attempt to enslave me thereby puts himself into a state of war with me; . . .

Freedom, the opposite of slavery, is a fence to preservation. This would seem to mean that the fundamental phenomenon is self-preservation. And freedom is derivative from self-preservation. Generally speaking, my process of preserving myself are greater if I am the judge of what to do or to omit in order to preserve myself. But this freedom of judging of the means of self-preservation and of acting on such judgments, that is the essence of freedom as Locke understands it. But let us go on.

Freedom

He that, in the state of nature, would take away the freedom that belongs to any one in that state, must necessarily be supposed to have a design to take away everything else, that freedom being the foundation of all the rest; . . .

Do you see this inversion? It was first the fence, and then the foundation. That is not a contradiction; it is only a different articulation of the same phenomenon. If something is the necessary and sufficient means for something else, as a means for the end it is subordinate to the end, but as the necessary and sufficient means of the end it can also be called the foundation of the end. Is this clear? Take another example to make it clear to you. Well let us assume that all things which are important to us can be obtained by money. Then money owes its value entirely to the things which can be bought with it, and yet, since it is the necessary and sufficient means, it becomes the objective of men. Same thing. But in theoretical precision one must say freedom is derivative from self-preservation and not the other way around.

And then he speaks later on (paragraph 20, end, and later) of the appeal to heaven. What is the appeal to heaven? If two men or two states, for that matter, have a conflict, a disagreement, now they are not subject to a superior power on earth. That is the definition of the state of nature. They appeal to heaven. What does that appeal to heaven mean?

(It is the request for God to give victory to a particular cause.)

It is a reference to a biblical passage. But what does Locke have in mind? I mean, how does this appeal to heaven look in practice.

(Well in practice it is empty. . .)

It is not empty in practice.

(Oh, it does not avoid the conflict; the conflict still takes place.)

Would it not be correct to say that Locke understands by an appeal to heaven an appeal to the sword. Does it not amount to this? Why is it a fair interpretation of Locke to say it is an appeal to the sword?

(Well, if someone comes at you with a pistol and you appeal to heaven and don't take up a pistol yourself, you violate the duty to self-preservation.)

But still there is another point. For example, if you take the biblical story as you see it in Judges and Jephthah. You would see that what Jephthah primarily means was an appeal to the justice of his cause for which God will vouch. It is not simply an appeal to force. Locke changes the meaning by the context. What entitles him in his opinion to make that change? Well, the consideration that the result of such a fight as is necessary since there is no common superior on earth is not necessarily favorable to the just cause. He speaks later on of the great robbers in the world who win. The outcome of such conflicts is by no means necessarily favorable to justice. Therefore, it is an appeal, in fact, an appeal to might, to force, to the sword and not to right. That is what Locke means by that.

I draw your attention to a remark in the beginning of paragraph 21, where Locke says

To avoid this state of war . . . is one great reason of men's putting themselves into society and quitting the state of nature.

The remarks of Locke about the state of nature are very ambiguous and contradictory. There are passages in which the state of nature is presented as a social state, but there are equally many passages, I have not counted them but there are plenty of passages, in which Locke identifies society with civil society. We disregard now families which are not very important. Society means for Locke ultimately the same as civil society. There is no pre-political society, although in a way Locke prepares that.

Now let us read this passage at the end where he speaks of Jephthah, (paragraph 21).

Had there been any such court, and superior jurisdiction on earth, to determine the right between Jephthah and the Ammonites, they had never come to a state of war; but we see he was forced to appeal to heaven: "The Lord the Judge," says he, "be judge this day between the children of Israel and the children of Ammon" (Judges Hi. 27.), and then prosecuting and relying on his appeal, he leads out his army to battle. And, therefore, in such controversies where the question is put, "Who shall be judge?" it cannot be meant, "who shall decide the controversy"; every one knows what Jephthah here tells us, that "the Lord the Judge" shall judge. Where there is no judge on earth, the appeal lies to God in heaven. That question then cannot mean: who shall judge whether another hath put himself in a state of war with men, and whether I may, as Jephthah did, appeal to heaven in it? Of that I myself can only be judge in my own conscience, as I will answer it at the great day to the supreme Judge of all men.

All the theological language which Locke uses cannot conceal the fact that the question "Who shall be judge" means everyone shall be judge. He says I "myself can only be judge in my own conscience, as I will answer it at the great day to the supreme Judge of all men." But that is beyond his cognition as he states in other passages. Humanly speaking, in such appeals the parties to the conflict are the judges.

Now for a few words about the last chapter, "Of Slavery". Let us read the beginning of this. There is a very important passage here right at the beginning.

The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth; nor under the dominion of any will or restraint of any law, but what that legislative shall enact according to the trust put in it.

Now let us see what Locke here implies. What does he imply regarding the relation of civil law to natural law?

(When the positive law comes into force, I wonder if the natural/Locke law particularly has developed continues to apply?)

It would seem to be perfectly clear that in civil society man is subject only to the positive law. He says ". . . nor under the dominion of any will or restraint of any law, but what that legislative shall enact according to the trust put in it." How is this compatible with his doctrine of natural law?-- even if we take the mildest and most anarchian version of the natural law there remains something like the things which man must do or forebear with a view to the peace and safety of mankind. Something of this remains in Locke certainly, but how is this compatible with the subjection only to the positive law? Now let us look first at Hobbes where the thing is extremely simple. What is the status of the law of nature in Hobbes once man has entered civil society?

(It disappears, doesn't it?)

Or rather it is reduced to the simple rule, "Obey the government." You obey the law of nature, according to Hobbes, in civil society by simply obeying the government. The idea being that the existence of government is the necessary condition of peace, and since the whole law of nature has no other purpose but to make possible peace among men, by obeying the government you obey the natural law. In Locke it is a bit more complicated as we have seen, but it is fundamentally the same. Only Locke says this: In a properly constructed civil society obedience to the government is identical or has absorbed completely obedience to the natural law. Properly constructed, i.e. a government which cannot possibly be destructive of the life, liberty, property of the subjects. Say a parliamentary republic, where the legislative body itself is subject to the laws which it has passed so that if they make confiscatory taxes they will have to pay the confiscatory taxes themselves. So if the legislators are as individuals subject to the law which they have passed, their self-interest forces them not to be tyrannical. And in that case no reservation of natural law is needed. By devising the proper institutions, you make natural law as an independent source of appeal unnecessary. I exaggerate a bit; we will later on see how this has been modified. But the fundamental idea of Locke is this-- to find institutional substitutes for the ineffective appeal of the individual to the natural law.

(But hasn't he implied at the end of the last chapter at the end of paragraph 20 that the individual even in such a government could retain the right to judge whether he is in fact . . .)

Surely. We will come to that discussion later on when he speaks of resistance. I forgot for a moment the heading of the particular chapter. The chapters are those entitled "Of Tyranny" and "Of the Dissolution of Government". We will

effectiveness - majority

take that up in these chapters. Locke does not deny the right, but this right is wholly ineffective by itself. It becomes effective only if a large body of men, in fact the majority, side with the persecuted individual. Generally speaking, one can say that these thinkers of the seventeenth and eighteenth centuries tried to find a substitute in institutions for the natural law. Now that is still clearer in Rousseau, but it is clear enough in Locke. This means two things. On the one hand, they prepared the destruction of natural law. You can easily see that. If you have a certain political system which automatically takes care of the rights of the individual, you can forget about the rights of the individual for practical purposes. But, on the other hand, theoretically as they meant it, natural right is of course the basis and justification of this particular system. I believe that part of the confusion in the nineteenth century, this legal positivism or whatever you call it, was due to this state as it existed on the continent after the French Revolution had constitutional mechanisms which made impossible downright tyranny. And therefore they said, the safest thing is not to go beyond the positive law. Because once you have appealed from the positive law to a natural law, that creates a great trouble. It is something like rebellion. Because there cannot be very well legal institutions taking care of the natural law as distinguished from the positive law. The Supreme Court, of course, is not guided by natural law as such but by a certain part of the positive law, the Constitution. The notion is, or has generally been in this tradition, "Let us replace moral exhortation, preaching, by institutions with teeth in them. Then we don't have to worry. The institutions will do the job." The difficulty with this is only that the institutions are no good if people do not have the spirit of the institutions in them. And that means something like exhortation. But it sounds extremely promising--not to worry, to have laws and institutional procedures; in other words, to have a kind of automatic enforcement of the demands of freedom. It seems to be much more promising than to depend on the never quite dependable heart of men. That is the peculiar realism of this development. You must not depend on human beings and their free decisions but on institutions. And Locke plays a role. I deliberately overstated the case in order to make it clear, but you will see later on that contrary to the popular notion of Locke as an individualist, the real safeguard of liberty which Locke gives is only a safeguard for the liberty of the majority against the tyrannical monarch or oligarchy. There is no safeguard, and there cannot be a safeguard in institutional terms for the liberty of the individual person. We will come to that later. For this reason his motto "Salus populi", the safety of the people as distinguished from the safety of the individual was very deliberately chosen. Locke knew that a perfect guarantee for the rights of the individual is not possible. In the moment the interest of the individual coincides with the interest of the large body of the people, then it is safe; otherwise, injustices cannot be avoided. Even the phrases borrowed from Locke in the Declaration of Independence reflect that distinction. You know, "transient abuses" here and there people will stand for, but only if the mass of the people sense it, then the situation becomes critical. So the rights of men must be backed up by the might of men, and that means by the majority. Never forget that an important part of the majoritarian tradition is the simple consideration that the many, the majority, are physically more powerful than any minority, which, of course, needs many qualifications considering the different states of military technique at different times. In our age it is no longer true because one hydrogen bomb is much stronger than millions of men. But in the age of the infantry and the "equalizer" it was very true.

(I wanted to ask about your earlier statement that in Hobbes' conception the problem of natural law disappears when the regime is instituted and that the individual has no right against the government.)

That is also not quite correct. The thing is that Hobbes teaches much more emphatically than does Locke that the individual reserves the right of self-

...the right to self-preservation. And in the same way, the power of the sword and the power of the purse are in order to save his life, he is perfectly justified. But he is not a slave, and says it is really not a very good police, it is the condemned criminal as well as the innocent man who is subjected to the despotic government. And Locke's thought is this--I want to have a sufficient effective guarantee for self-preservation and that I can only do so if the individual retains in civil society some say regarding the means of self-preservation. Now if we assume that the means of self-preservation are restricted to the holding property, it means that if the individual can vote for representatives, which representatives have the power of the purse, then even if not directly, to some extent at least, retains the power of judging as to the means of self-preservation. Because we know that the vote of the individual, the power of the purse and the amount of taxes which are levied, is of some value. This is the of freedom, of liberty according to Locke.

There is one more passage which I believe we should consider. I refer you to a passage which occurs very emphatically in paragraph 23: "freedom from absolute arbitrary power" is indispensable for self-preservation. And later on the same words are used. I ask you to keep this in mind because Locke, if I understand well, is going to make a distinction later on. Because some form of arbitrary power is necessary from Locke's point of view, because the sovereign body, the legislative body itself which decides what shall be the law in a given case, decides arbitrarily. I mean in the sense that they are no longer subject to any higher authority. So I ask you to keep this expression in mind.

And in conclusion, in paragraph 24 there is another reference to the difference between master-servant and lord-slave. And he says the Jewish institution of servitude in Exodus xxi, where he says men sold themselves only for a money to go into slavery, "for it is evident that the person sold was not under absolute, arbitrary, despotical power; /here he adds despotical and absolute and arbitrary/ for the master could not have power to kill him at any time, but at a certain time, he was obliged to let go free out of his service."

It is interesting to reflect on how this would affect the relation between God and man if all master-servant relations are only of a temporary nature. And I suppose he also means out of service before death, because otherwise it wouldn't work. At any rate, when you look up the passage in Exodus xxi, and especially since Locke didn't indicate any verses you assume that the 21 will also refer to the verse 21, you read this:

If a man smite his servant or his maid with a rod and he die under his hand, he shall be surely punished, not withstanding if he continue a day or to /but if he doesn't die immediately/ he shall not be punished for he is

In other words, that does amount to the statement that if the beating is not so severe as to kill so he doesn't die immediately it amounts to a right to beat. I think is what Locke wanted us to observe. The distinction between a slave and the Hebrew servant is not practically so important as the tradition said it was.

End of lecture)